

Restricted Citizenship
The Struggle for Native American Voting Rights in Arizona
by
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A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Arts

Approved November 2011 by the
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ARIZONA STATE UNIVERSITY

December 2011

ABSTRACT

This thesis explores the story behind the long effort to achieve Native American suffrage in Arizona. It focuses on two Arizona Supreme Court cases, in which American Indians attempted, and were denied the right to register to vote. The first trial occurred in 1928, four years after the Indian Citizenship Act granted citizenship to all Native Americans born or naturalized in the United States. The Arizona Supreme Court rejected the Native American plaintiff's appeal to register for the electorate, and subsequently disenfranchised Native Americans residing on reservations for the next twenty years.

In 1948, a new generation of Arizona Supreme Court Justices overturned the court's previous ruling and finally awarded voting rights to all qualified Native Americans in the state. However, voting rights during the Civil Rights era did not necessarily mean equal voting rights. Therefore, this thesis also investigates how the Voting Rights Act of 1965 greatly reduced the detrimental effects of voter discrimination. This study examines how national events, like world war and the Great Depression influenced the two trials. In particular, this thesis focuses on the construction of political and social power in Arizona as it related to Native American voting rights. In addition, it discusses the evolution of native citizenship in the United States at large and for the most part within Arizona. The thesis also considers how the goal of native assimilation into American society affected American Indian citizenship, and how a paternalistic and conservative American Indian policy of the 1920s greatly influenced the outcome of the first

trial. Another thread of this story is the development of mainstream white views of Native Americans.

Lastly, this thesis identifies the major players of this story, especially the American Indian activists and their supporters whose courage and perseverance led to an outcome that positively changed the legal rights of generations of Native Americans in Arizona for years to come.

DEDICATION

For Glenn, Lillian, Mom and Dad.

ACKNOWLEDGMENTS

During the production of this thesis, I was blessed by the assistance and support of a number of amazing people. I am especially appreciative of all the advice, guidance, encouragement, and time Dr. Donald L. Fixico, the chair of my committee has given me. I truly appreciate all his support in completing this monumental task. I also want to thank my other committee members, Drs. Jannelle Warren-Findley, Melanie Sturgeon, and Katherine Osburn. I am grateful for all their recommendations, direction, and patience they have given me throughout this process. I am truly fortunate to have worked with such a dedicated and bright committee. I am indebted to all four members for completing this project. I also want to thank Dr. Patricia Mariella for her insights on the topic of my thesis, and for inspiring me to choose such a fantastic study.

Other people outside of Arizona State University have also given me a tremendous amount of emotional support through this journey. I would like to thank Dr. Anne E. Campbell, an Associate Professor of TESOL and Bilingual/Multicultural Education at Fairfield University in Connecticut. Anne was a colleague of my father's and has been a dear family friend for over twenty years. I appreciate her hosting my mom and me at her home this summer, while I visited Yale University for research, and most importantly, I am truly indebted to her for all the advice, guidance, and support she has given me. I know that my father would be pleased to know that I asked Anne for her counsel in this process. I have a terrific support system of family and friends and unfortunately, there are

too many of them to mention, but there is one individual I would like to thank among them. Leah Harrison has been my close friend even prior to us both applying to the Public History program at Arizona State University in 2009. She has been a wonderful support through this process, and I do not know if I would have been as prepared for this project if it had not been for her. My mother, Nancy Bradley is probably the best mom in the world. I want to thank her for listening to me go on and on about my thesis and for all the encouragement she has given me over the years. Even though, my father, John Bradley passed away several years ago, his spirit still inspires me and helped me finish this task. I truly miss him every day. Lastly, there is one important person I want to thank. I am lucky enough to also have the best husband in the world. My husband Glenn Bassett has put up with so much these last few years while I attended graduate school. Not only did he have to put up with a spouse writing a thesis, but he also had to put up with a pregnant spouse writing a thesis. He is a very strong man indeed. I honestly do not know if I could have completed this thesis project without his emotional support. He has been very patient and kind, and I do not think I will ever begin to let him know how thankful I am to him, and how much I love him. Honey, you can have the computer back now.

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PREFACE

The idea for this thesis topic came to me while attending one of the Landmark Case Committee meetings in the summer of 2010. The committee, organized under the auspices of the Arizona Historical Records Advisory Board, is composed of lawyers, judges, county clerks, historians, and chaired by Dr. Melanie Sturgeon, the Arizona State Archivist. The committee was developed as part of the Arizona Superior Court retention schedule with the purpose of creating a list of *landmark* cases from specific criteria outlined by the Arizona Historical Records Advisory Board and the Arizona Supreme Court. Those court cases determined to be *landmark* or historically significant by the committee will be preserved in a special archival collection housed at the State Archives in downtown Phoenix. One of the committee members suggested making the 1948 Arizona Supreme Court case, *Harrison v. Laveen*, a landmark case. I asked Dr. Sturgeon after the meeting about the trial, and she gave me a brief background. I was shocked that Native Americans in Arizona had not received the right to vote until 1948. Still intrigued, I did some preliminary research on the internet, and discovered a transcript to a film on the topic produced by the Intertribal Council of Arizona. I then learned from the transcript, about the 1928 Arizona Supreme Court trial, *Porter v. Hall*, which denied suffrage to Native Americans, and it forced me to investigate further. Next, I performed a quick secondary search on the topic, and found very little. The case was mentioned in almost every book on Native American civil rights history, but there was not any true study on the

specific trials. After deciding that this might be a good topic for a thesis project, I contacted Dr. Patricia Mariella, the Director of the American Indian Policy Institute at Arizona State University. Dr. Mariella had worked on the film project for the Intertribal Council in the 1980s, and she recounted stories of meeting Frank Harrison, the Yavapai plaintiff of the 1948 trial. After researching the topic further, I became to realize how impressive a story I had just found.

This thesis topic is important to Native American history and civil rights history for many reasons. The study is layered with multiple theoretical concepts about humanity, and it provides unique insights into our society, race-relations, and most importantly the construction of power. Lastly, the “major-players” as I call them—the people involved in the two court cases and the rest of the story truly demonstrate how diverse our human race is. The courage it took for Peter Porter, Rudolph Johnson, Frank Harrison, and Harry Austin to stand up for their rights as individual citizens of the United States of America is truly inspiring.

CHAPTER 1

INTRODUCTION

Both the 1920s and the 1940s were monumental decades in the history of the United States, and quite politically and socially divergent from each other. These two time-periods influenced all aspects of society—including American Indian civil rights. During the 1920s, most states had given voting rights to their American Indian constituents, but as late as 1948, only two states refused to follow the others and grant suffrage to Native Americans. Arizona was one of those two states to disallow the most basic democratic right to American Indians. Arizona also had one of the largest percentages of Native Americans. Arizona's story of the process for Native American enfranchisement is layered with social, political, and cultural conflicts. The dissimilar social and political climates of the two decades greatly influenced the chances for American Indian voting rights in Arizona.

A number of conservative political measures directly influenced the legal status of minority Americans across the nation in the 1920s. In 1924, ironically the same year as the Asian Exclusion Act, the federal government finally granted United States citizenship to Native Americans. The 1924 Indian Citizenship Act was a federal inclusionary measure that changed the legal status of an estimated 125,000 Native Americans, about one-third of the group's population across the United States who had not already achieved American citizenship through other

lawful procedures.¹ The act gave citizenship status to all American Indians born or naturalized in the United States, but the act omitted a highly important aspect of citizenship—it did not characterize which citizenship rights Native Americans received.² Thus, each state had the authority to determine whether its new American Indian citizens had the right to vote.

Immediately after the passage of the federal act, Arizona legislators and lawyers scrambled to determine what should be the legal status of its Native American populace. In a highly politicized moment in Arizona history, some state government officials feared that giving the franchise to its large population of American Indians would counterbalance the political power in the state. According to the 1920 census, Native Americans composed nearly ten percent of the total population with almost 33,000 counted individuals and factoring in as the largest minority group counted at the time.³ In the 1920s, Arizona and New Mexico, respectively, had the second and third highest populations of American Indians in the United States after the State of Oklahoma, and ironically, both these states were the last in the union to enfranchise one of their largest minority

¹Felix S. Cohen, *Felix S. Cohen's Handbook of Federal Indian Law*, ed. Rennard Strickland (Michie, MI: The University of Michigan, 1982), 153; N.D. Houghton, "Wards of the United States—Arizona Applications: A Study of the Legal Status of Indians," *University of Arizona Bulletin* XVI, no. 3 (July 1945): 17.

² *The Indian Citizenship Act of 1924*, 68 P.L. 175; 68 Cong. Ch. 233; 43 Stat. 253, (June 2, 1924).

³ Hispanic Americans are not singled out in this count, possibly because they were included under the "White" category. U.S. Bureau of the Census, *Composition and Characteristics of the Population by States, 1920*, prepared by the Department of Commerce, Bureau of the Census, Washington DC: Government Printing Office, 1922, 74.

groups.⁴ In a conservative state such as Arizona with a high concentration of Native Americans—the threat of a shift in the political power was a serious concern to those at the top. By 1928, the Arizona Supreme Court determined that its Native American constituency did not have the privilege of franchise in its state. The conservatism of the decade in Arizona cost newly decreed American Indian citizens their suffrage in the state.

Twenty years later in 1948, the legal and social status of Native Americans was once again changing within society. America's mainstream nature increasingly began to include American Indians. Arizona was again changing ideologically as well. Liberalism became more prominent in politics during the decade. By 1948, in a rare move, the Arizona Supreme Court reversed its 1928 decision on Native American voting rights and granted American Indians suffrage in the state.

This thesis aims to explicate the long path to suffrage for Native Americans in Arizona, and to explain the reasons for their prolonged disenfranchisement. The second goal of this thesis is to demonstrate that the rejection of Native American voting rights in Arizona was a form of cultural hegemony imposed by non-native political leaders. The dominating white class in Arizona used its political power to disenfranchise and further suppress native people, and it was only when a positive change in the cultural perception of

⁴ American Indian population statistics borrowed from "Original American's First Vote," *The Literary Digest*, September 22, 1928, 17.

American Indians by non-natives that enabled legal action to grant Native Americans voting rights in Arizona. Furthermore, this process is layered with attributes of power redistribution, federal paternalism, and minority assimilation. Borrowing quantitative data already harvested from political scientists, this thesis will also aim to provide a historical context of how the essential legislation from the Civil Rights Era (after the 1964 Civil Rights Act) affected the voting rights and practices of Native American Arizonans. While doing so, it will also demonstrate a newer recognition of the Native American voting bloc in primary and general elections over the past few decades.

Since our nation's earliest days, the right to vote as a citizen of the United States has been a contested political and human rights issue. The voting electorate has included and excluded several distinct factions of people throughout American history, and in the early days of our nation, it was based on ascriptive principles such as being a white, Protestant male born or naturalized on American soil.⁵ The Fifteenth Amendment of the United States Constitution, adopted in the aftermath of the Civil War finally awarded suffrage to African American males based on the legal provision that voting rights could "not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."⁶ On August 18, 1920, the ratification of the

⁵ Patricia Lee Furnish, "'Aboriginally Yours': The Society of American Indians and United States Citizenship, 1890—1924," (PhD dissertation, Norman, OK: The University of Oklahoma, 2005), 18.

⁶ U.S. Constitution, amend. 15, sec. 1.

Nineteenth Amendment removed gender as a disqualification to vote, and all women born or naturalized in the United States were irrevocably added to the electorate. After a legal battle ensued in the midst of the Vietnam War, the Twenty-sixth Amendment lowered the legal voting age to eighteen in recognition of disenfranchised eighteen-year-old drafted soldiers risking their lives in war. No constitutional amendment ever granted suffrage to American Indians. Indeed, the majority of Native Americans, whose ancestors inhabited American soil long before Europeans arrived, were deprived even United States citizenship until after World War I.

The prolonged disenfranchisement of Native Americans in the United States has largely been ignored in the historiography of American citizenship and political science. While the literature on Native American history is expanding, there is little focus on Native American voting rights. There is a large amount of scholarly discussion and research on similarly related topics such as Native American property and water rights and the suffrage of other groups of people such as women. Most studies on American Indian policy and law only bring it up once or twice, and if voting rights are mentioned it is usually to make a passing point. There is a very short list of works entirely devoted to American Indian voting rights. Two of the most recent studies focus almost entirely on the restoration of equal voting rights to disenfranchised Indians after the 1965 Voting

Rights Act.⁷ There is no current study on the era in which Native Americans obtained voting rights.

Despite a lack of national recognition on the topic, local historical and legal circles have already recognized the path to suffrage for Native Americans in Arizona. For the past several years, Dr. Melanie Sturgeon, Arizona State Archivist and the late Dr. Noel Stowe, former Director of the Public History Program at Arizona State University worked together to archive Arizona's landmark legal cases at the Arizona State Archives. Dr. Sturgeon currently chairs the Landmark Case Committee, which includes local Arizona historians, lawyers, judges, and county clerks. The Arizona Historical Records Advisory Board developed the Landmark Case Committee as part of the 2006 retention schedule of the Arizona Supreme Courts.⁸ Dr. Sturgeon and Dr. Stowe together convinced the Arizona Historical Records Advisory Board to formulate a committee designed to identify *landmark* or historically significant court cases for preservation at the Arizona State Archives, and available for future research. The Arizona Historical Records Advisory Board and the Arizona Supreme Court assembled a list of specific criteria for the identification of *landmark* cases to be conserved. The committee reviewed hundreds of cases and narrowed the list to a

⁷ See Daniel McCool, Susan M. Olson and Jennifer L. Robinson, *Native Vote: American Indians, the Voting Rights Act, and the Right to Vote* (Cambridge: Cambridge University Press, 2007); Laughlin McDonald, *American Indians and the Fight for Equal Voting Rights* (Norman, OK: University of Oklahoma Press, 2010).

⁸ The Committee was formed by the Arizona Historical Records Advisory Board as per the Arizona Code of Judicial Administration Pt 2, Chap 4 Section 3-402 (F) (2) (b) (1).

select few. One of the challenges of the committee was defining a landmark case instead of one with just historical significance.

In spite of this challenge, the committee immediately categorized one case as landmark. The 1948 *Harrison et al. v. Laveen* Arizona Supreme Court case was considered a landmark case first by the committee because it ruled in favor of American Indians voting rights in Arizona. Two American Indian World War II veterans from the Fort McDowell Indian Reservation attempted to register to vote in Maricopa County and were rejected by the county registrar, Roger Laveen. Frank Harrison and Harry Austin sued the County Registrar for the gross injustice he had caused to their civil liberties. The Superior Court upheld the Arizona law that disenfranchised Native Americans and the case was appealed to the Arizona State Supreme Court. Finally, in the highest court of the State, Harrison and Austin received the vindication they fought for with the strong support of their legal team. Qualified Native American citizens all over Arizona could now vote in any election. However, the *Harrison v. Laveen* trial was not the first case to challenge Arizona law. Its 1928 predecessor, *Porter et al. v. Hall*, upheld the denial of American Indian voting rights in Arizona at a time when the legal status of Native Americans in Arizona and all over the nation was still out of focus.

Both cases, *Porter v. Hall* and *Harrison v. Laveen* occurred after the enormously important Indian Citizenship Act of 1924, which granted citizenship to all Native Americans at the federal level. The failure of the Indian Citizenship Act to include suffrage as a tenet of Native American citizenship allowed for

individual states to determine if American Indians were a part of their electorate or not. This resulted in a slow, piecemeal fight by American Indians and American Indian suffrage supporters to argue for this inherent democratic right. Finally, by 1948, feelings about civil liberties and rights were changing and the famous quote given by Justice Levi Stewart Udall in his legal opinion in *Harrison v. Laveen* reflects that change: “In a democracy suffrage is the most basic civil right, since its exercise is the chief means whereby other rights may be safeguarded. To deny the right to vote, where one is legally entitled to do so, is to do violence to the principles of freedom and equality.”⁹ Udall’s quotation reveals how far progress had come for equal rights in America, yet there was much more to do. The process for Native American civil rights in the United States is a long story that has its roots in the early nineteenth century.

A part of this story is the pursuit for equal civil rights. Once American Indians were enabled to vote in Arizona, they entered into a new realm of voter discrimination—new challenges found at the ballot box that were similar in style and intent to the hardships African Americans faced in the Deep South and elsewhere during the Civil Rights era. Ultimately, the Voting Rights Act of 1965 prohibited legal and extralegal barriers to enfranchisement for all American citizens.

⁹ *Harrison et al. v. Laveen*, 5065 (Supreme Court of Arizona, Lexis Nexis Academic, July 15, 1948), 4. The first sentence of this quote was borrowed by Justice Udall from Felix S. Cohen, *Felix S. Cohen’s Handbook of Federal Indian Law*, 157.

Long before the 1965 Voting Rights Act addressed equal voting rights for American Indians and other minorities, the conservative political and social flux of the 1920s, and the liberal stability of the 1940s directly affected the civil rights of Native Americans. The new modern era of the 1920s encouraged the emergence of new lifestyles and trends. For example, while consumerism became increasingly a greater part of American culture, conservative traditionalists fought back with prohibition. Socially, a renewed sense of nativism supported by white supremacy groups forced a decline of immigration. The 1924 Immigration Act, also known as the National Origins Act or the Asian Exclusion Act directly resulted from a rise of nativism. This federal law prohibited the immigration of Asian immigrants and reduced the percentages of Southern and Eastern immigrants allowed to enter the United States.

While the United States Congress passed legislation that discriminated against immigrants, women made important political gains. After years of having a suppressed citizenship status, women finally succeeded in winning the right to vote at the federal level during a period of intense social conservatism. The 1920s were marked with conflicting progressive and conservative ideological views of the legal status of American Indians of both genders compared to all non-native women. Despite the passage of the 1924 Indian Citizenship Act, the federal law did not guarantee Native American suffrage. The white dominant class more easily accepted women as voters as opposed to Native Americans because women

lived in the same cultural environment as men, but to whites Native Americans were the “Other.”

Edward Said envisioned the concept of “Othering” in his 1978 book, *Orientalism*. Said’s idea of “Othering” describes the dominant class’s endeavor to culturally and socially isolate certain groups of people for the purpose of gaining superiority over them. In the process of “Othering,” the imperialist, dominant class views its colonized subjects as exotic and immoral, and consequently the subjects become inferior and the lowest members of society.¹⁰ Said’s concept of the “Other” has its influence in white-Indian relations in the United States. According to Said’s theory, dominant society classified Native Americans as the “Other” because of their cultural differences. Since American Indians had their own “foreign” culture, suffrage was more difficult for this group that existed on the fringe of American society to achieve than for white women.

Bias politics became one of the reasons Native Americans faced challenges to securing enfranchisement in Arizona during the 1920s. Since statehood in 1912, the Democratic Party enjoyed local political dominance in the state.¹¹ However, political power shifted in the state during the 1920s when the Republican Party secured some important elected seats. For example, the results of 1920 state election gained the GOP the majority in the Arizona Senate, and a

¹⁰ Edward Said, *Orientalism* (New York: Vintage Books, 1978), 65-67.

¹¹ David R. Berman, *Arizona Politics and Government: The Quest for Autonomy, Democracy, and Development* (Lincoln: University of Nebraska Press, 1998), 41, 47.

near tie in the House.¹² The Arizona electorate also voted in Republican candidates for governor in 1920 and 1928.¹³ The 1928 election was a crushing blow to the Democratic Party when the republican candidate, John Calhoun Phillips, ousted long-serving democratic Governor George W. P. Hunt from office.¹⁴ In spite of the political gains of the GOP, the Democratic Party continued to enjoy majority party status in Arizona throughout the 1920s.¹⁵ The competitiveness between the two parties in the 1920s resulted in an unfounded fear from some members of the Democratic Party that their political control of the state could waver if the potentially new voting bloc of Native Americans were added to the electorate. Believing the new American Indian voting class would collectively vote for republican candidates, some Democrats urged for the disenfranchisement of Native Americans in 1928.

The Democratic Party, however, dominated the 1930s, especially in the 1930 and 1932 election years.¹⁶ In those two years, Arizona followed national voting trends, specifically in 1932 with the election of President Franklin D.

¹² Ibid., 47.

¹³ Ibid. George W. P. Hunt served Arizona as governor during 1912 to 1917 and for six consecutive years between 1923 and 1928.

¹⁴ Hunt returned to the campaign trail in 1930, and won that year's election for Arizona governor. It was his seventh and final term as Arizona governor.

¹⁵ Ibid.

¹⁶ Ibid., 48.

Roosevelt.¹⁷ However, the disparity between elected Democrats and Republicans in the Arizona State Legislature was especially evident between 1933 and 1951 with the overall landslide representation of the Democratic Party between those years.¹⁸ The conservative nature of the Democratic Party, relatively in complete local power, allowed for the continuation of American Indian disenfranchisement in Arizona.

Nationally, the Democratic Party, however, began to change ideologically, and taking more liberal stances on policy-making. It was the beginning of a Democratic Party political realignment that did not begin to take any effect until the early 1930s.¹⁹ In Arizona, conservative Democrats faced intraparty conflict as more liberal Democrats took control of the party by the 1950s and 1960s.²⁰ Meanwhile, the Republican Party drew more and more support from conservative Democrats.²¹ By the time Frank Harrison and Harry Austin attempted to register in 1947, the Democratic Party in Arizona had already begun to realign ideologically, which may have contributed to the outcome of the trial. Ultimately, it was the momentous catalyst of World War II that finally ensured the enfranchisement of Native Americans in Arizona.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ James L. Sunquist, *Dynamics of the Party System: Alignment and Realignment of Political Parties in the United States* (Washington D.C.: The Brookings Institution, 1983), 198-199.

²⁰ Berman, *Arizona Politics and Government*, 51-54.

²¹ Ibid.

World war almost entirely absorbed the 1940s. The Second World War had a tremendous impact on national and local communities throughout the globe. Following the Japanese attack on Pearl Harbor, Americans generally felt united in a greater cause. Men and women of all backgrounds volunteered their service and their lives for a higher purpose to win the war, thus defending Americanism—what it was to be an American was paramount.

World War II was a world-changing event that had its effects in Arizona. The war effort introduced a new wave of nationalism in America. People of all backgrounds came together against a great evil. The pride of being an American countered the horrific and tragic events overseas. An overwhelming sense of patriotism caused millions of Americans to contribute their service, their donations, and their lives to the war effort. Native Americans from tribes all over the country enlisted in droves with the United State military just as they had in World War I. The community driven, nationalistic atmosphere of the 1940s allowed for another restructuring of power within Arizona society. In general, white Americans began to perceive Native Americans in another light. There was an incipient sense of acceptance of American Indians, especially those who had fought alongside their white comrades in the war. This mainstream attitudinal change towards American Indians in Arizona resulted in the positive outcome of the *Harrison v. Laveen* trial. Arizona's social and political climate during World War II enabled another restructuring of power within the state.

The story of Native American voting rights in Arizona is essentially a story about power structures and race relations. French theorist, Michel Foucault provides a greater understanding of power structures within societies. He described power constructs using an analogy in his theoretical piece, *Madness and Civilization: A History of Insanity in the Age of Reason*. Foucault portrays the establishment of the Hôpital Général of Paris in 1656 to care for the sick, indigent, and mentally ill. He argued that the founding of this institution was not necessarily for medical purposes, but rather as a tool by the French government to impose authority over the lower classes. Foucault writes, “A quasi-absolute sovereignty, jurisdiction without appeal, a writ of execution against which nothing can prevail—the Hôpital Général is a strange power that the King establishes between the police and the courts, at the limits of the law: a third order of repression.”²² The Hôpital Général served a new purpose for the government of France—to separate and control those individuals deemed unworthy of societal interaction. Before the Hôpital Général was established, mentally insane individuals were free to carry on their lives within their communities just as everyone else did. With the introduction of the Hôpital Général, the institution’s directors and doctors then had full authority to pull individuals they considered insane and place them within the confines of the hospital. These individuals, separated from their communities, were now *institutionalized* and the right to

²² Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Pantheon Books, 1965), 40.

freedom that they once enjoyed was gone. The analogy of the Hôpital Général has served its theoretical purpose in many academic disciplines investigating power structures. Indeed, the analogy has its place in native/white relations in the United States and in the State of Arizona.

The disenfranchisement by one group of people over another is a form of political suppression or theoretical confinement—a type of power structure that is illustrated in Foucault’s analogy of the Hôpital Général. By eliminating the power produced in the vote, the dominate group can control the weaker and voiceless faction. The inability to respond rightfully to how a government presides over the life of an individual is suggestive of the freedom taken away when one is imprisoned or institutionalized. When white government officials determine that the legal status of Native Americans does not include suffrage, then the power structure in play also involves racial and cultural dominance.

White superiority is the ideological opinion that white people are more advanced in all aspects of life over non-whites, and it is also an instrument to formulate a power structure by the white dominating class. The dogma of white superiority was also transparent in white-Indian relations. White government officials viewed themselves as guardians over their Indian wards. This concept of the guardian/ward relationship led to an abuse of power at the federal level. Because of their status as wards of the United States government, white government officials tended to conclude that Native Americans were helpless and needed the oversight and control of the federal government through the Office of

Indian Affairs. The guardian-ward relationship between white government officials and Native Americans is supporting evidence of how ingrained white superiority was in American white culture. Fundamentally, human beings have always thrived in power structures, and the guardian-ward relationship between whites and Native Americans more than suggests another example of one group of people forcing dominance over another.

With political and social progress comes an opportunity for the rebalancing of power. Progress, in the case of Native American voting rights was an incremental process towards achievement. The 1924 Indian Citizenship Act contributed to a restructuring of power in Arizona. Once the federal government recognized all born or naturalized Native Americans as American citizens, Arizona officials scrambled to determine the legal status of Native Americans in their state. The ultimate question was whether Arizona Native Americans had the right to vote according to the Arizona constitution. While Native Americans in Arizona benefitted in some ways from their newfound American citizenship, the progress of enhancing their citizenship status to include voting rights actually slowed down. The 1924 Indian Citizenship Act provided an opportunity for American Indian suffrage in Arizona. Initially, white government officials in Arizona supported the enfranchisement of Native Americans, but largely their opinions changed once the next general election drew near. The potential voting bloc of Native Americans was a threat to some white government officials in Arizona. The 1928 *Porter v. Hall* trial was essentially a mechanism used by some

white government officials in Arizona to maintain the current power structure. Those seeking to disenfranchise Native Americans during the trial used the paternalistic guardian-ward argument to effect their desired outcome. After the trial's end, American Indians were denied the right to politically participate in their own government, were unrepresented and consequently more oppressed by the prevention of their right to vote in Arizona. The consequence of depriving Native Americans suffrage made them second-class citizens in Arizona.

One of the layers to this story is the power of paternalism that white government officials held over American Indians. Paternalism, as is discussed in this work, was an extension of federal Indian relations carried over into mainstream thinking. At the end of the nineteenth century, the vast majority of United States government officials and the Protestant class of Christian reformers believed in a form of paternalism in which Indian policy forced assimilation upon native peoples. Assimilation included the moral, social, political and most importantly the cultural values that the Christian reformers wished to impose upon the American Indian individual. Reform movements as the Indian Rights Association and the Lake Mohonk Conferences of the Friends of the Indians believed that such programs would ultimately transform the American Indian into a United States citizen fully capable of handling his/her own affairs. The Christian reformers who heavily pushed for the assimilation of Indians were representatives of a fast growing and increasingly politically puissant constituency of the Protestant American nineteenth century population. Historian

Francis Paul Prucha writes, “When they spoke, they spoke for a large majority of the nation, expressing views that were widely held, consciously or unconsciously.”²³ Their ultimate goal was to end Indian tribalism and, in its place, develop a sense of individualism. Protestant Christian reformers of the late nineteenth century and the early twentieth century had effectively changed the United States government’s Indian policy and had successfully lobbied for reform programs like allotment, which supported the individualization and Americanization of Native Americans.²⁴

Robert Berkhofer explained in his book, *The White Man’s Indian*, the white American’s strident conviction of individualizing the Native American for the purpose of assimilation. Berkhofer theorized that the liberal ideals of rugged individualism that defined Americanism sharply contrasted with the communalistic values of Indian tribalism. Therefore, the dominant white class believed it was imperative to culturally assimilate American Indians with the values of individualism in order to mark them as true Americans.²⁵ Part of the

²³ Francis Paul Prucha, *The Great Father: The United States Government and the American Indians Part II* (Lincoln: University of Nebraska Press, 1984), 625.

²⁴ Prucha, *The Great Father*, 772-773. However, in hindsight, the legislation that they fought for only created a more paternalistic situation in which the United States government became more and more involved in the lives of Native Americans. The individualization that they wished for eroded when more and more American Indians slipped into a state of dependency upon the Indian Office. The credibility of the assimilationist policies that the Protestant Christian reformers formulated waned and their position as advisors to the United States government on Indian policy dwindled.

assimilation process for Christian reformers was to make Indians into American citizens. In order to achieve complete assimilation, thousands of Native Americans were subject to government-sponsored education programs, land allotment policies and even name changing. Granting citizenship to American Indians for the promotion of individualism was one approach in debasing the cultural values of Indian tribalism. However, awarding citizenship did not necessarily mean providing the Native American with a voice to speak out for or against his/her new government, nor did it necessarily mean governmental representation for the new American Indian citizen. The access to suffrage for many Native Americans continued to be blocked.

Casting a vote is demonstrative of the power an individual has in his/her democratic society—it is the power to participate politically in one's government. The deprivation of the vote removes any power the individual has in determining how he/she can be governed. This concept of the disenfranchised individual can be linked to subaltern theory. Subaltern theory describes the power roles of the subaltern—the individual or group of individuals that is outside of the hegemonic power structure. Subaltern theory is a theoretical offshoot of Edward Said's postcolonial concept of "Othering." Said's notions of the *Other* were expanded by postcolonial theorists Antonio Gramsci of Italy and Gayatri Chakravorty Spivak of India to create the concept of the *subaltern*. Spivak depicts the

²⁵ Robert Berkhofer, *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, Inc., 1978), 155.

subaltern as, “all that is not elite.”²⁶ Her line of thought concerning subaltern theory focuses more on the question, “Can the Subaltern Speak?” which is the speculative title of her monumental essay published in 1988.²⁷ In her essay, Spivak elaborates on the controversial example of the Hindu sati funerary practice, which involves the suicide of Indian widows. She ultimately concludes that the marginalized subaltern cannot speak, because Western perspectives ignore the point of view of the Indian widow, herself a subaltern.²⁸ Spivak philosophizes that once the subaltern can speak, then “the subaltern is not a subaltern any more.”²⁹

Gyanendra Pandey, a distinguished history professor from Emory University, crystallizes subaltern theory to include the paradox of citizenship. Viewing the subaltern as a “political construct,” Pandey created the *subaltern citizen*.³⁰ He states that, “the term ‘citizen’ as a modifier for ‘subaltern’, [is] an

²⁶ Gayatri Spivak and Harold Veese, “The New Historicism: Political Commitment and the Postmodern Critic,” in *The Post-Colonial Critic: Interviews, Strategies, Dialogues*, by Gayatri Chakravorty Spivak, ed. Sarah Harasym, 152-168 (New York: Routledge, 1990), 158.

²⁷ Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” in *Marxism and the Interpretation of Culture* ed. C. Nelson and L. Grossberg, 271-313 (Basingstoke, UK: Macmillan Education, 1988).

²⁸ Spivak, “Can the Subaltern Speak?,” 93-104.

²⁹ Gayatri Spivak, “The New Historicism,” 158.

³⁰ Gyanendra Pandey, “Subaltern Citizens and Their Histories,” *Interventions* 10, no. 3 (2008): 271-284, 275.

indicator of the political quality of all subalternity (and all dominance).”³¹

Regarding the term *citizen* Pandey describes it,

...first as the bearer of the legal right to residence, political participation, state support and protection in a given territory; the second, a more diffuse sense of acceptance in, and acceptance of, an existing order and existing social arrangements.³²

Thus, the marrying of *subaltern* and the politicized *citizen* provides for a new paradigmatic structure in thinking this discussion about subaltern theory. With Pandey’s view of the subaltern existing in a community environment where personal and social growth are achievable, there is now a possibility for the subaltern to reach its full potential.³³ On this subject, he explains,

The claim is rather about historical agency broadly defined, and about belonging in a society and in its self-construction. That is to say, it is about the living of individual and collective lives, and the limitations on that living: about the potential for life and creativity in given historical circumstances, and the restriction of that potential.³⁴

It is the “*restriction of that potential*,” as Pandey writes, which forms the subalternity of the subject. Given what we know about constructions of subalternity and citizenship, it becomes apparent that these theoretical paradigms can be applied to the race relations between the Native American/Euro-American dichotomy. Pandey’s concept of the subaltern citizen is applicable to the disenfranchised Native American in Arizona before 1948. American Indians in

³¹ Ibid., 277.

³² Ibid.

³³ Ibid., 275.

³⁴ Ibid., 275-276.

the state were limited from their right to vote and thus *restricted* from participating in their own government before the 1948 Arizona Supreme Court trial of *Harrison v. Laveen*. Since American Indians were deprived of the right as citizens to engage in the “self construction” of their own government, then according to Pandey’s definition, they were subaltern citizens.

Another theoretical model that is relevant in the history of Native American voting rights in Arizona is Glenn Loury’s definition of racial stigma. In his 2003 article, *Racial Stigma: Toward a New Paradigm for Discrimination Theory*, Boston University economics professor, Glenn C. Loury elaborates on the conceptual distinction between racial discrimination and racial stigma.³⁵ Speaking primarily of African American race relations, Loury asserts that, “[r]acial discrimination has to do with how blacks are treated, while racial stigma is concerned with how black people are perceived.”³⁶ While Loury employs his definition of racial stigma towards an argument about the economic discrimination against African Americans, his definition of *racial stigma* is applicable to the attitude of white governmental officials towards Native Americans in Arizona during the twentieth century, and how it influenced American Indians suffrage.

³⁵ Loury is also currently the Director of the Institute on Race and Social Division at Boston University.

³⁶ Glenn C. Loury, “Racial Stigma: Toward a New Paradigm for Discrimination Theory,” *The American Economic Review* 93, no. 2 (2003): 334.

Native Americans' struggle for voting rights, let alone equal voting rights, has been a long and tedious process since the formation of the United States, and a process in which the majority of Native Americans were never involved. For years, white American officials squabbled over the legal status of American Indians. A large issue concerning the legal status of American Indians was the determination of their citizenship with the United States. What rights should they be afforded and which denied? Despite the fact that Native American tribes were culturally distinct from each other and, most importantly, from European-Americans, all tribes and their members were lumped together into what was known as the "Indian Question." The "Indian Question" as it is so called, was largely Jeffersonian era recognition by European-American politicians that a necessity to integrate all American Indians into the larger American society was looming. By the end of the nineteenth century, wars between the tribes and the United States military had almost entirely ended. Simply, treaties were finalized and reservations set aside. Yet, there seemed an endless number of issues to resolve such as taxes and land rights. For many government administrators, the most difficult matter was how to incorporate these individuals into American society. The need to "civilize" Native Americans was at the forefront of the "Indian Question." A part of the solution to civilize American Indians was to make them United States citizens.

History of Native American Citizenship in the United States to 1924

For most of the nineteenth century, Native Americans were not eligible to become citizens of the United States. This exclusion began with the writing of the Constitution. Article 1, Section 2 of the Constitution simply stated that for the distribution of representatives and direct taxes for each state, “Indians not taxed” would not be counted. Native Americans were not considered within the governance of the United States and therefore not taxable. The confusion of how Native Americans related to United States society was also evident in Article 1, Section 8. In this clause, Congress had the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The relationship between the United States government and American Indian tribes was uncertain, yet the former at this point deduced it had no authority over the latter.³⁷

The seemingly extrajurisdictional relationship between the United States government and American Indian tribes changed in the 1830s with a set of three Supreme Court cases known as the Marshall Trilogy. Chief Justice John Marshall tried to explain the nebulous relationship between the United States government and Native American tribes, but his decisions within the three trials were

³⁷ McCool, *Native Vote*, 1. For more information, see Vine Deloria, Jr. and David E. Wilkins, *Tribes, Treaties and Constitutional Tribulations* (Austin: University of Texas, 1999).

contradictory and confusing.³⁸ His statements in these three trials would have lasting effects on the legal status of Native Americans for the next century.

The issue of the sovereignty of Native American tribes came to a boiling point in 1828. That year the State of Georgia enacted laws that drastically reduced the rights of Cherokee Indian residents within the state. These actions by the State of Georgia were an effort to force Cherokees to move from their tribal lands. The Cherokee occupied a territory that was rich in resources and the state government of Georgia wanted free access to those resources. The Cherokee Nation sued the State of Georgia, claiming the state had no jurisdiction over their tribe, but their complaints fell on deaf ears at the Supreme Court. In the 1831 Supreme Court case *Cherokee Nation v. Georgia*, Chief Justice Marshall pointed out that the clause in Article 1, Section 8 of the Constitution, mentioned above, described Indian tribes as discrete from foreign nations and states. In order to explain the distinct status of Indian tribes with relation to the United States government, Marshall concluded that Indians tribes “be denominated domestic dependent nations.”³⁹ Marshall went further to describe this special relationship adding,

They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward of his guardian. They look to our government for protection; rely upon its kindness and its

³⁸ Ibid., 2.

³⁹ *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831).

power; appeal to it for relief to their wants; and address the president as their great father. They and their county are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion [sic] with them, would be considered by all as an invasion of our territory, and an act of hostility.⁴⁰

Justice Marshall concluded that an “Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the courts of the United States.”⁴¹ Therefore, the Supreme Court denied the injunction.

In 1832, Justice Marshall presented his opinion to the court for the *Worcester v. Georgia* Supreme Court trial. The previous year, Cherokee missionary, Samuel A. Worcester, a non-Indian, was arrested for living in Cherokee territory without a permit or taking an oath of allegiance to the State of Georgia according to state law. This Supreme Court case along with its predecessor, *Cherokee v. Georgia* attempted to describe the legal status of the tribe and its relationship with the United States. Marshall concluded that the Cherokee Nation was its own “distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves...”⁴² Since Marshall now believed that the

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² *Samuel A. Worcester v. The State of Georgia*, 31 U.S. 515 (1832).

Cherokee Nation had sovereign power to determine who could and could not inhabit their land (except for any treaties or by an act of Congress) the Court overturned Worcester's conviction. Georgia had no jurisdiction over the Cherokee territory that overlapped the state. This ruling only further confused the special relationship between Native American tribal nations and the United States Government.

The Fourteenth Amendment of the Constitution passed just after the Civil War in June 1866. Adopted from the Civil Rights Act of 1866, Article I Section 2 of the amendment stated, "That all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."⁴³ After a heated debate on the Senate floor, Section 1 of the Fourteenth Amendment eventually omitted the phrase "excluding Indians not taxed," but the phrase remained in Section 2 stripping all non-taxed Native Americans of any governmental representation.⁴⁴ Despite the omission of the phrase "excluding Indians not taxed" in the first section of the Fourteenth Amendment declaring, the citizenship of all those born on American soil, Native Americans were still not considered United States citizens.

The debate over the legal status of Native Americans continued. In 1869, Congress established the Board of Indian Commissioners to serve as a counsel to

⁴³ *Civil Rights Act of 1866*, 39 Cong. Ch. 31; 14 Stat. 27, (April 9, 1866), § 1; McCool, *Native Vote*, 3.

⁴⁴ McCool, *Native Vote*, 4.

the United States federal government on American Indian policy. The first report of the Board of Indian Commissioners presented a solution to the “Indian Question” other than the extermination of all Native Americans:

The legal status of the uncivilized Indians should be that of wards of the government; the duty of the latter being to protect them, to educate them in industry, the arts of civilization, and the principles of Christianity; elevate them to the rights of citizenship, and to sustain and clothe them until they can support themselves.⁴⁵

The concept that Native Americans were “wards of the government” harkened back to the language used by Justice Marshall in the *Cherokee v. Georgia* trial. The Board of Commissioners however, now believed that the federal government should take a more active role in the livelihood of their Native Americans “wards.”

In his 1874 annual report, Commissioner Edward P. Smith of the Indian Office presented new policy to the House for consideration regarding Native Americans affairs. Smith believed that all Native Americans whether on or off reservations should now be under state and/or federal jurisdiction. He argued that individual Native Americans needed the protection of law from other Indians and from their white neighbors. Smith’s report outlined a growing need for legislation to police Native Americans and secondly to “encourage... individual

⁴⁵ United States, Office of the Indian Affairs, *Annual Report of the Board of Indian Commissioners* (Washington D.C.: The Office, November 23, 1869), 5-11.

improvement.”⁴⁶ Smith categorized his proposals under the umbrella term, “Qualified Citizenship.”⁴⁷ To “encourage individual improvement,” Smith recommended the following,

- (1.) By providing a way into citizenship for such as desire it.
- (2.) By providing for holding lands in severalty by allotment for occupation, and for patents with an ultimate fee, but inalienable for a term of years.⁴⁸

The “qualified citizenship” that Commissioner Smith desired for Native Americans was a start towards a new line of policy regarding the legal status of Native Americans in the United States known as *conditional citizenship*.

For most of the nineteenth century two distinct policies to settle the “Indian Question” dominated the American political landscape. The first policy to “exterminate” the Indian race judged harshly against the Native American populace. Whites who reasoned for this solution believed so strongly in the degradation of American Indians as a people that sharing land or resources with them was impossible. The numerous Indian wars that spanned the continent demonstrated this first line of thinking. The second federal policy for the “Indian Question” was to create reservation systems and eventually assimilate Native Americans into the larger United States society. At the end of the nineteenth

⁴⁶ U.S. Department of the Interior, Office of Indian Affairs, *Report of the Commissioner of Indian Affairs*, November 1, 1874, by Edward P. Smith, House Executive Document no. 1, 43d Cong., 2d sess., serial 1639, 326.

⁴⁷ Ibid.

⁴⁸ Ibid.

century, reservations served as a place for government agencies like the Bureau of Indian Affairs to inflict assimilation policies upon American Indians. Scholar, Francis Paul Prucha writes, “The reservations were a controlled society in which, the sooner the better, tribal ways would fall before the ways of the dominant white society.”⁴⁹ The second policy in favor of the “civilizing” of American Indians was the first stepping-stone towards Native American citizenship and enfranchisement. Yet for most of the second half of the nineteenth century, the designation of citizenship was on a conditional basis and voting rights not even considered.

The 1868 Treaty of Fort Laramie between the Sioux and the Indian Peace Commission was one of the first of many policies that endorsed conditional citizenship for Native Americans. The last paragraph of Article Six of the treaty declared any Sioux that obtained a land patent would become a United States citizen. Whether or not a Sioux could vote in an election was unclear, but the treaty did stipulate that the Sioux had a form of dual citizenship between the Sioux tribe and the United States. The Treaty of Fort Laramie was exceptional for many policymakers believed that Native Americans had to abandon all affiliations with their tribe in order to become American citizens.⁵⁰ Even then, Native Americans were still deprived of all of the rights and privileges of citizenship.

⁴⁹ Prucha, *The Great Father*, 644.

⁵⁰ McCool, *Native Vote*, 5.

The test case for voting rights came in 1880, when Native American John Elk attempted to register to vote in Omaha, Nebraska and was denied by Registrar Charles Wilkins. The Supreme Court reviewed the case four years later in 1884. The trial's outcome was significant in further determining the nebulous legal status of Native Americans in the United States. John Elk argued that since he had abandoned his tribal affiliation and lived in Omaha among white residents, he was entitled to the full rights of citizenship including voting privileges under the provisions of the first section of the Fourteenth Amendment and the Fifteenth Amendment. The Supreme Court ultimately ruled that since the United States never recognized Elk as a citizen he was therefore not a citizen and not entitled to vote.⁵¹ Despite the provision in the first section of the Fourteenth Amendment which stated that "...all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens..." it was the second section of the article that finally determined Elk's and all other American Indians' legal status.⁵² Since he did not pay taxes and was not represented according to the second section of the Fourteenth Amendment, Elk was considered equivalent to "... the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations."⁵³

⁵¹ *Elk v. Wilkins*, 112 U.S. 94, (1884).

⁵² U.S. Constitution, amend. 14, sec. 1.

⁵³ U.S. Constitution, amend. 14, sec. 2.

Three years after the landmark decision in the *Elk v. Wilkins* Supreme Court case, American Indian policy regarding the “Indian Question” changed when Congress adopted the Dawes General Allotment Act in 1887. The act fulfilled the two wishes for the “encouragement of individual improvement” proposed by Indian Office Commissioner Edward P. Smith in his 1874 annual report. The Dawes General Allotment Act mainly sought to fracture tribal relations by allotting in severalty parcels within Indian reservations to those individual Indians willing to sever ties with their tribe. Furthermore, the Dawes Act stipulated that every Indian be allotted a certain sized parcel within the reservation depending on their social status. Once all the available land was divided up between each individual Native American, the rest of the remaining land was sold off after negotiating its value with the tribe. The U.S. Treasury held the profit of the surplus land for the use of the tribe but Congress often allocated the reserve for the Americanization of tribal members through education and other welfare programs.⁵⁴ Reformers in support of the act believed that by breaking up tribal relations, individual Indians would assimilate more easily into the larger American society. Individualism included self-support which the reformers wished allotment of Indian lands in severalty would provide.⁵⁵ The Dawes Act garnered another aspect of paternalism that radiated from it; after the patent for the allotment was issued, the new Native American owner was then

⁵⁴ Prucha, *The Great Father*, 668-669.

⁵⁵ *Ibid.*, 621.

liable to the state and territorial laws of which he or she resided.⁵⁶ The final additive to this prescription for integration was to grant citizenship rights to all those Indians who had “voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life.”⁵⁷ The Dawes Act effectively linked land ownership with citizenship. The federal government enacted the bill after President Cleveland signed it into law, quickly dividing several reservations. The rate of the sale and the allotment of tribal lands troubled even Senator Dawes. At the following 1887 Lake Mohonk Conference organized by the Friends of the Indians American Indian reform association, Dawes stated, “There is no danger but this will come most rapidly—too rapidly, I think, —the greed and hunger and thirst of the white man for the Indian’s land is almost equal to his ‘hunger and thirst for righteousness.’”⁵⁸ The formula for the “Indian Question” was for the time being resolved in the minds of the Christian reformers, but the act’s damages to tribal communities would have lasting effects. Nevertheless, all of the harm the act inflicted on tribal communities, the Dawes Act had for the first time set up by law an avenue for Native Americans to become citizens.

⁵⁶ Berkhofer, *The White Man’s Indian*, 174.

⁵⁷ *The Dawes Act aka The General Allotment Act of 1887*, 49 Cong. Ch. 119; 24 Stat. 388, (February 8, 1887), § 6.

⁵⁸ Lake Mohonk Conference Proceedings, 1887, 67, quoted in Prucha, *The Great Father*, 670.

Motion by motion, Native Americans slowly gained citizenship rights in the United States under conditional circumstances, but the road to full citizenship with voting rights would not end until well into the twentieth century. On March 3, 1901, Congress amended the Dawes Act to make citizens of all of the Native Americans living in the Indian Territory. Despite the positive direction of this amendment, the 1906 Burke Act made citizenship more difficult for Native Americans to obtain under the Dawes Act. The Burke Act stipulated that Native Americans applying for allotments after May 8, 1906 could not receive citizenship status at the establishment of the twenty-five year trust period for allotments, but instead at the end. The Christian reformers ardently rejected the Burke Act of 1906, but its passage was the first evident point in which Christian reformers had a decline of influence with legislators.⁵⁹ Yet by the following year, after the termination of the Indian Territory and the establishment of Oklahoma's statehood, the Oklahoma Enabling Act granted citizenship to all Native Americans living in the former Indian Territory.⁶⁰

Native American activist groups also supported American Indian citizenship. In response to paternalistic policies like the Dawes General Allotment Act, a new pan-Indian movement emerged during the Progressive Era. At the forefront of this movement was the Society of American Indians, founded in 1911. The Society of American Indians was a secular group organized by

⁵⁹ Ibid.

⁶⁰ McCool, *Native Vote*, 7.

American Indians for the promotion of progressive values of education and better welfare, and crystallized by a renewed sense of Indian race consciousness.⁶¹ Most importantly, the society's leaders adopted the progressive ideal of accepting American Indian acculturation into the larger American society.⁶² Members sought to integrate into the modern American society, while still embracing their Indian background—an active attempt to change their societal status away from wardship.⁶³ In the words of historian Patricia Lee Furnish, “The SAI aspired to be the native voice of that civilizing process and to shape the institutions that made the process legitimate.”⁶⁴ Most of the association's leaders were educated and professional American Indian men—a group of individuals who represented the highest potential of their race.⁶⁵ Citizenship for all Native Americans became one of the primary objectives of the Society of American Indians, especially with the start of World War I.⁶⁶ Dr. Charles Eastman, Dr. Carlos Montezuma and Father Philip Gordon, prominent members of the Society of American Indians, openly advocated for Indian citizenship during speaking tours in 1919.⁶⁷ However,

⁶¹ Prucha, *The Great Father*, 782.

⁶² Hazel W. Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971), 6; Furnish, “Aboriginally Yours,” 10.

⁶³ Prucha, *The Great Father*, 782.

⁶⁴ Furnish, “Aboriginally Yours,” 11.

⁶⁵ Hertzberg, *The Search for an American Indian Identity*, 38.

⁶⁶ Furnish, “Aboriginally Yours,” 11-13.

⁶⁷ Hertzberg, *The Search for an American Indian Identity*, 182.

Eastman and Montezuma's advocacy for the dissolution of the Indian Bureau overshadowed the association's cause for American Indian citizenship. The leaders argued that the agency's paternalistic nature caused Native American hardships.⁶⁸ The attack on the agency, however, would ultimately doom the group.⁶⁹ By the 1920s, the association declined in influence and broke up, but its impact on the Pan-Indian movement and American Indian civil rights was felt in other newer associations throughout the rest of the twentieth century.⁷⁰

During World War I, many Native Americans felt it was their duty to contribute to the war effort. The willingness for some Native Americans to participate in the war effort even though they were not required was a patriotic demonstration of their bond to the United States and their capability to manage their own individual affairs as potential loyal American citizens.⁷¹ They donated to the Red Cross, bought war bonds, and added to the production of food reserves. However, the most important contribution to the war effort was the military service of some ten to twelve thousand Native Americans across the nation.⁷² Cato Sells, the Commissioner of Indian Affairs during the war, insisted that

⁶⁸ Prucha, *The Great Father*, 782.

⁶⁹ Hertzberg, *The Search for an American Indian Identity*, 199; Prucha, *The Great Father*, 783.

⁷⁰ Hertzberg, *The Search for an American Indian Identity*, 45-46.

⁷¹ Susan Applegate Krouse, *North American Indians in the Great War* (Lincoln: University of Nebraska Press, 2007), 7, 17, 28-29.

⁷² Prucha, *The Great Father*, 771; Krouse, *North American Indians in the Great War*, 5.

Native Americans were integrated into military units rather than having their own separate groups. In viewing the Indian soldier, Sells believed that he should be treated, “as the equal and comrade of every man who assails autocracy and ancient might, and to come home with a new light in his face and a clearer conception of the democracy in which he may participate and prosper.”⁷³ In recognition of their service to the United States, Congress passed an act on November 6, 1919 granting citizenship to all American Indians who served in the United States military during World War I and received an honorable discharge. Sells urged reservation superintendents to spread the word about the new act to their constituents.⁷⁴ This act was a large stepping-stone for Native Americans to achieve American citizenship; however, a provision of the act made it very difficult for those honorably discharged Native American veterans to obtain their right to American citizenship. The act specified that World War I Native American veterans had to prove their identity and their honorable discharge from the military before a “court of competent jurisdiction” in order to acquire United States citizenship.⁷⁵ The process proved difficult for many American Indian veterans and Anthropologist Susan Applegate Krouse, in her study *North American Indians in the Great War*, argues that the vast majority of American Indian veterans were unaware of the citizenship act or of its process of

⁷³ Cato Sells, CIA Report, 1918, Serial 7498, 3-18, quoted in Prucha, *The Great Father*, 771.

⁷⁴ Krouse, *North American Indians in the Great War*, 154.

⁷⁵ *Act of November 6, 1919*, 66 P.L. 75; 66 Cong. Ch. 95; 41 Stat. 350, (November 6, 1919).

application. She furthermore, attests that there was a large amount of uncertainty and confusion between American Indian veterans and government officials about the new legal status of American Indian World War I veterans.⁷⁶

As aforementioned, the 1924 Indian Citizenship Act was the one federal action that affected the lives of thousands of Native Americans around the United States. The act granted citizenship to all Native Americans born or naturalized in the United States, but it did not specify what specific rights came along with this new legal status. Because the act was vague in this respect, each state had the authority to fill in the details. Only a few states like Arizona established that their new Native American citizens were ineligible to acquire the right of suffrage. Arizona state officials believed in the doctrine of paternalism and used the guardian/ward argument to obstruct American Indians in their state from participating in governmental affairs.

The 1924 Indian Citizenship Act provided access to American Indians all over the United States to American citizenship. The act bestowed American citizenship status to the remaining approximately one-third of the American Indian population who had been unable to obtain it through other legal measures.⁷⁷ The solution to the “Indian Question” of “civilizing” Native Americans was well under way in the early part of the twentieth century, but the

⁷⁶ Krouse, *North American Indians in the Great War*, 155-163.

⁷⁷ Furnish, “*Aboriginally Yours*,” 17.

definition to Arizona lawmakers of what full citizenship rights for Native Americans meant was unclear.

The nebulous legal status of American Indians in Arizona occurred because Arizona lawmakers feared a redistribution of power in Arizona. There was, however, much more to the story. On the political level, conservative government officials believed that the introduction of such a large minority into the electorate would offset established political party bases. On a racial level, the story of American Indian suffrage in Arizona brings up issues of white superiority and dominance over Native Americans. As always in the history of humankind, the socially dangerous situation of one class determining the legal rights of another is equivalent to political and social oppression. In Arizona, white government officials could be characterized in this sense as the oppressors, and Native Americans the oppressed. Lastly, the paternalistic nature of American Indian cultural assimilation placed values of Americanism over tribalism.

CHAPTER 2

DISTINCT DENIAL

Certainly, the passage of his Indian Citizenship bill in 1924 was one of the hallmark political moves of New York Representative Homer P. Snyder's political career. Before the bill's ratification by Congress, did Snyder ever dream of the legal, social, and political ramifications that would follow? As Chairman of Indian Affairs in Congress, did he ever realize the complexity and challenges that the bill created when turning all American Indians into American citizens? Did he ever consider the fact that American citizenship could undermine tribal citizenship and vice versa? The Indian Citizenship Act was only seventy-two words in comparison to the 1934 Indian Reorganization Act, which was roughly forty-eight pages, but its impact on generations of American Indians was just as immeasurable.

On July 2, 1924, one month after the passage of the 1924 Indian Citizenship Act, Arizona Attorney General John W. Murphy sent a circular to all the county attorneys in response to a number of queries as to the act's effects on American Indian enfranchisement in the state. Murphy sent his opinion to the *Arizona Republic* for publication, and it was copied in full within the article. Citing federal HR Bill 6355, Murphy at first agreed with the provisions of the act regarding American Indian voting rights; "Being citizens their right to vote cannot be abridged or impaired by state legislation, but such right is absolute. Having the

right to vote, they have the right to register as voters under the laws of the state.”⁷⁸ Murphy also concluded that the state did not have the jurisdiction to establish polling and registration centers on reservations, but that it was necessary to redraw current voting precincts to include reservations, and that polling centers be made available and near those reservations.⁷⁹ Having received a copy of Murphy’s opinion on the matter, Commissioner Charles H. Burke of the Office of Indian Affairs in a letter to Arizona Congressman Carl Hayden, encouraged all the county attorneys to act upon Murphy’s decision to redraw voting precincts with the inclusion of reservations. Burke pushed for immediate action upon Murphy’s part in order to evade allegations of inequity by Native Americans or their supporters. He wrote, “This will avoid a feeling on their part that they are being improperly treated or discriminated against.”⁸⁰ Burke then pressed that the state actually take governmental action to set up polling centers on reservations in the near future and offered any assistance from the Office of Indian Affairs to do so. Hayden passed Commissioner Burke’s letter on to Attorney General Murphy. Immediately after the passage of the Indian Citizenship bill in Congress, Attorney General Murphy initially agreed with its proviso that American Indians had the

⁷⁸ “Native Born Indians Enfranchised by New Bill Says Attorney General Ruling: Must Qualify by Same Tests as Any Other Voter,” *Arizona Republic*, July 2, 1924.

⁷⁹ *Ibid.*

⁸⁰ Charles H. Burke to Carl Hayden, letter, July 30, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

right to vote under state laws, but it seems his attitude on the subject changed with the influence of other governmental officials.

Just days following the publication of his opinion in the *Arizona Republic*, Arizona Attorney General John W. Murphy continued to respond to inquiries regarding the state qualifications for its electorate. The State of Arizona in 1924 had five requirements for voter registration eligibility. According to paragraph 2879 of the Civil Code, an Arizona citizen had to have the following qualifications to register to vote for any election:

1. Of the age of 21 years.
2. A resident of the state one year and of the county and precinct 30 days.
3. Who is able to read the Constitution of the United States in the English language.
4. Who is not an idiot or an insane person.
5. Who shall not have been convicted of treason or felony.⁸¹

In response to a letter from Frank M. Gold, an attorney in Flagstaff, Arizona, Murphy wrote that, in his opinion, no American Indian could register to vote who could not read the United States Constitution. Reading between the lines, Murphy implied that this third requirement of the electorate would undoubtedly block the registration of illiterate Native Americans. Since literacy was a component of civilizing American Indians, no “uncivilized” Native American would be able to vote in any Arizona election. Furthermore, Murphy offered his thoughts on the consequences of enfranchising the American Indian populace: “Doesn’t it occur

⁸¹ John W. Murphy to Frank M. Gold, letter, July 9, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

to you, Frank, that in most cases if any ulterior influence is to be exerted over the Indian that it might come from the political party that is in National control, which at this time happens to be the Republican party?”⁸² This last sentence demonstrates that Murphy, a Democrat, feared that American Indians would collectively vote for the Republican Party over the Democratic Party. This could be a great concern to the Democratic Party, which had gained political control over the state since statehood.⁸³ This statement reveals a lingering generalization of native peoples by whites, and the sentence furthermore exposes the reality that Native Americans were rarely thought of as independent individuals. Most importantly, since Republicans were in control of the federal government, Arizona Democrats became alarmed that a new voting bloc would increase the political strength of the Republican Party in the state.

At the end of the month, on July 25, 1924, Attorney General Murphy sent out letters of inquiry to the county attorneys of the fourteen Arizona counties requesting their views regarding the jurisdiction of the State of Arizona to establish polling places on Indian reservations. For the most part, Murphy received more opinions from the county attorneys than he had asked for. Despite

⁸² Ibid.

⁸³ Berman, *Arizona Politics and Government*, 41, 47.

the fact that Murphy believed that, “Certainly, since citizenship is given to the Indian...he is entitled to vote,” various county attorneys disagreed.⁸⁴

J. Andrew West the Deputy County attorney for the Yavapai County responded first to Murphy’s letter on July 30, 1924. Before presenting any opinion on the jurisdiction of polling centers on reservations, West first tackled the issue of American Indian voting rights; “Citizenship is not coextensive with suffrage, as has been repeatedly held, and therefore the mere fact that the government makes an Indian a citizen does not in itself mean that the Indian can vote.”⁸⁵ To support his statement, West cited a number of legal cases in which voting for state or county elections was withheld for military personnel residing on a base. However, West overlooked the fact that these individuals had the right to an absentee ballot from their home state. To make another point, West cited the outdated 1875 U. S. Supreme Court decision in the case of *Minor v. Happersett*. He reminded Attorney General Murphy that in this U.S. Supreme Court judgment, citizenship for women did not include the eligibility to vote, and furthermore it took the Nineteenth Amendment to grant women suffrage in 1920.⁸⁶ In the rest of his letter, West specified legal reasons why the State of Arizona did not have jurisdiction to establish polling places on reservations. He

⁸⁴ John W. Murphy to H. H. Baker, letter, July 25, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁸⁵ J. Andrew West to John W. Murphy, letter, July 30, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁸⁶ Ibid.; *Minor v. Happersett*, 88 U.S. 162; 22 L. Ed. 627 (1875).

further articulated the importance of the American Indian leaving his reservation in order to gain the rights of American citizenship, “I do not believe the Indian has acquired any right to vote unless he abandons the Indian reservation and establishes residence on property of this state.”⁸⁷ West’s rhetoric recaptures the lingering belief of late nineteenth century assimilationist Indian policy, of which Native Americans needed to abandon the tribalism of the reservation in order to become “civilized” through the tenets of Americanism.

George W. Crosby Jr. responded on behalf of Coconino County Attorney Frank Harrison on July 31, 1924.⁸⁸ Crosby was a Superior Court judge for Coconino County between 1915 and 1918, and mentioned in his letter to Attorney General Murphy that this topic had come up before during his term as judge for the Coconino County Superior Court. Crosby stated several arguments in favor of establishing polling places on reservations and concluded that residency on a reservation did not disqualify a potential registrant. Crosby finished his letter to Attorney General Murphy with the following assertion:

The 30,000 newly made Indian citizens who live in the northern part of the three counties of Apache, Navajo, and Coconino, living off by themselves and with no training for citizenship may make an element that will bring on race troubles akin, in a small degree, to what the South went through since the enfranchisement of the Negroes. I fear that we have not yet awakened to what troubles may come and will come, because and [sic] ignorant body of voters is a purchasable body to a greater or less extent, yet just as a matter of law I believe those Indians are not deprived of the

⁸⁷ Ibid.

⁸⁸ The Frank Harrison mentioned here is not related to Frank Harrison the plaintiff in the 1948 *Harrison v. Laveen* Arizona Supreme Court trial.

right of suffrage by living on the Indian reservations of Arizona. If we stop them from voting, and I hope we can do so until they are better qualified, we must do it, in my opinion, in some other way than by holding them nonresidents because they live where they do.⁸⁹

Crosby truly shows his personal conflictions on the subject, fearing that American Indians were not educated enough to take on their new “civilized” responsibility, and acknowledging that there is little the state government can do to stop their enfranchisement, yet encouraging any attempt at a legal blockage from Murphy. A sense of white racial dominance and superiority stands out in this last paragraph of Crosby’s. He was a man of his times, who believed social and political problems would arise from the enfranchisement of a culturally different American populace. This paragraph suggests the threshold of a power struggle between the dominant white governing class and the faction of new Native American citizens, whose fluctuating legal status was gaining more authority.

Three other county attorneys did not agree for one reason or another that the new Native American citizens had any right to enfranchisement. Pinal County Attorney, E.F. Patterson, wrote in a terse letter that he agreed the State of Arizona had no jurisdiction over reservations to institute polling places, and that American Indians living on reservations without another residence were ineligible, in his opinion, to vote. Patterson made an important point, “The State of Arizona has absolutely no jurisdictions over the Reservations, except to serve civil and

⁸⁹ George H. Crosby, Jr. to John W. Murphy, letter, July 31, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

criminal processes. How has the State any power to punish infractions of the election laws, be they ever so numerous?”⁹⁰ The formation of dual-citizenship of American Indians by the Indian Citizenship Act created new ambiguities in law for governing officials. Graham County Attorney, E.L. Spriggs was the first County Attorney, and perhaps the first Arizona governmental official to point out the perception of the guardianship-ward legal status of American Indians in Arizona and its relationship to citizenship. He wrote, “I am convinced it is proper to establish voting precincts upon reservations but there is a question as to the legality of an Indian’s vote by reason of them being wards of the United States Government, if their being wards can be classed as guardianship.”⁹¹ Just a day later, Thorwald Larson of Navajo County also brought up the guardianship clause in paragraph 2879 of the Civil Code, and reiterated it in his letter to Murphy, “But idiots, insane persons and persons *non compos mentis* or under guardianship, shall not qualified to register for any election.”⁹² Larson wholeheartedly thought that the guardianship clause omitted any American Indian from enfranchisement if he was determined to be a ward of the government. Larson was also the first person to connect the guardianship-ward argument with paragraph 2879 of the Arizona

⁹⁰ E. F. Patterson to John W. Murphy, letter, August 5, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁹¹ E. L. Spriggs to John W. Murphy, letter, August 5, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁹² Thorwald Larson to John W. Murphy, letter, August 6, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

Civil Code, a legal association that would later have a tremendous impact in the 1928 *Porter v. Hall* trial.

Two of the seven county attorneys that responded to Murphy's solicitation were in favor of establishing voting precincts on reservations and supported American Indian suffrage in Arizona. Ross H. Blakely of Mohave County agreed that American Indians should be entitled to vote through the 1924 Indian Citizenship Act and saw no obstacles in establishing polling centers on the reservations.⁹³ County Attorney, Levi S. Udall of Apache County, wrote Attorney General Murphy his view that voting precincts should absolutely be established on reservations and claimed at least five already had in Apache County. Udall saw no hindrance to the Native American's eligibility to voting privileges, since their residence on a reservation, in his judgment, served the residency requirement in paragraph 2879 of the Civil Code.⁹⁴ Levi S. Udall later went on to serve as Arizona Supreme Court Justice between 1947 and 1960, the year he passed away. In a special irony, Udall's liberal stance on American Indian civil rights would have more effect in 1948, when he along with Justices R. C. Stanford and Arthur T. LaPrade provided the majority opinion in the *Harrison v. Laveen* case that would overturn the ruling in the 1928 *Porter v. Hall* trial. It

⁹³ Ross H. Blakely to John W. Murphy, letter, August 2, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁹⁴ Levi S. Udall to John W. Murphy, letter, August 13, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ. There were no found responses of the county attorneys from Cochise, Gila, Greenlee, Maricopa, Pima, Santa Cruz, and Yuma counties.

seems that Udall from the beginning to the end of his political career was sympathetic to American Indian civil rights.

Earlier in July, the Office of the Indian Affairs had already taken action to implement and clarify the new laws established by the Indian Citizenship Act. Commissioner Charles H. Burke sent out a circular to all reservation superintendents advising them of the Indian Citizenship Act and its terms. Burke made it clear in the circular that the act did not change the legal status of individual or tribal property rights as stated under the provision, “That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property.”⁹⁵ Burke also explained that the transmittal of citizenship upon American Indians did not change their wardship status with the federal government; “...citizenship is not inconsistent with wardship, this act does not of itself terminate the wardship of the Indians.”⁹⁶ Furthermore, Burke advised all reservation superintendents to inform their Native American constituents of their new American citizenship status. In the circular, Commissioner Burke wrote his interpretation of the act authorizing the enfranchisement of the new faction of citizens. He explained, “...they are now entitled to suffrage under the same conditions as other residents of the State...”⁹⁷

⁹⁵ Charles A. Burke, Circular 2025, Office of Indian Affairs, Department of the Interior, July 10, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

⁹⁶ Ibid.

⁹⁷ Ibid.

However, he encouraged that the superintendents review state election laws and inform the Native Americans in their district on the proper procedures and requirements to vote. Burke understood that the act did not articulate the relationship of American Indian citizenship and suffrage. Therefore, the purpose of ordering the superintendents to review state election laws was because each state still had the authority to determine the requirements of its electorate. He concluded his circular with the importance of communicating the state election laws to Native Americans, "...you should endeavor to advise your Indians so as to avoid embarrassment or disappointment."⁹⁸ Burke knew that in some states, the disenfranchisement of American Indians would continue despite their new legal standing, and this belief proved correct in Arizona. The following presidential election year of 1928 would reopen the dispute between white governmental officials on the issue of American Indian suffrage in Arizona.

On May 23, 1928, Hubert Work, the director of the Department of the Interior, sent Governor Hunt an informational letter regarding the Merriam report and encouraged him to request a free copy from the Institute of Government Research, which produced the study. While there is no supporting evidence that Hunt requested a copy, he did receive an abridged summary of the report. Officially titled, *The Problem of Indian Administration*, the Meriam Report came to fruition through the Committee of One Hundred, a conference held in 1923 of

⁹⁸ Ibid.

one hundred individuals with knowledge and experience in American Indian affairs. The group was composed of a broad spectrum of interested parties from the government including the Board of Indian Commissioners to private institutions like the Indian Rights Association.⁹⁹ The Committee of One Hundred suggested that the Department of the Interior oversee a comprehensive study on American Indian welfare in the United States, in view of the fact that the agency generally received scattered and infrequent information about American Indian affairs. With the support of John D. Rockefeller Jr., the Institute of Government Research, a non-governmental agency, conducted the study over a period of seven months in 1926.

A survey staff of nine specialized experts headed by Lewis Meriam researched and wrote the report. A graduate of Harvard University and statistician by trade, Meriam previously worked for the United States Census Bureau between 1905 and 1912 before he moved onto the Institute of Government Research in 1916.¹⁰⁰ The research team divided into eight specialties: legal aspects; general economic conditions; conditions of Indian migrants to urban communities; health conditions; existing material relating to Indians; family life and activities of women; education and agriculture.¹⁰¹ The Institute of

⁹⁹ Prucha, *The Great Father*, 807.

¹⁰⁰ *The Problem of Indian Administration (The Meriam Report)* (Baltimore, The John Hopkins Press, 1928), 79-80.

¹⁰¹ *Ibid.*, 79-85

Government Research hired Henry Roe Cloud of the Winnebago Tribe as Indian Adviser. Cloud attended Yale for his associate bachelor's degree and master's in anthropology between 1910 and 1912. He was the editor for the *Indian Outlook* journal published by the American Indian Institute and the founder and president of the American Indian Institute.¹⁰² The specialist in legal aspects, who probably wrote the opinions on American Indian citizenship, was Ray A. Brown, an Assistant Professor of Law at the University of Wisconsin. Brown received his Doctorate of Juridical Science from Harvard Law School in 1923.¹⁰³

The Johns Hopkins Press published the report after its completion on February 21, 1928.¹⁰⁴ Officials at all levels of the government throughout the United States received copies of the report, and it was accepted as the official guide for governmental action for the next two decades. Work's explanation for the report to Governor Hunt suggested it was to help garner more information to solve the incessant "Indian Problem." He wrote, "The Indian is both an economic and humane problem of tremendous appeal. Supervision of these wards of the Government is more involved and widespread than that of any bureau in this Department."¹⁰⁵ The prevailing conclusion of the report was that Native

¹⁰² Ibid., 80-81

¹⁰³ Ibid., 80.

¹⁰⁴ Hubert Work to George W. P. Hunt, letter, May 23, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ; Prucha, *The Great Father*, 808-809.

¹⁰⁵ Ibid.

Americans were in an economic crisis: “An overwhelming majority of the Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization.”¹⁰⁶ The report furthermore concluded, “The economic basis of the primitive culture of the Indians has largely been destroyed by the encroachment of white civilization.”¹⁰⁷ Despite this allegation, the authors of the report furthermore asserted that there was nothing else to do but continue with assimilation policies, because,

The fact remains, however, that the hands of the clock cannot be turned backward. These Indians are face to face with the predominating civilization of the whites. This advancing tide of white civilization has as a rule largely destroyed the economic foundation upon which the Indian culture rested. This economic foundation cannot be restored as it was. The Indians cannot be set apart away from contacts with the whites. The glass case policy is impracticable.¹⁰⁸

The “glass case policy” was a declaration by white friends of the Indians who admired Native American cultural aspects and wished to preserve the “vanishing race” by separating tribes from white civilization.¹⁰⁹ However, as the report predicted, the “glass case policy” would be virtually impossible, and the solution of report was a continued guardian-ward relationship between the federal government and American Indians.

¹⁰⁶ *The Problem of Indian Administration*, 3.

¹⁰⁷ *Ibid.*, 6.

¹⁰⁸ *Ibid.*, 87.

¹⁰⁹ *Ibid.*; Alvin M. Josephy Jr., “Modern America and the Indian,” in *Indians in American History: An Introduction*, ed. Frederick E. Hoxie and Peter Iverson, 198-217 (Wheeling, IL: Harlan Davidson Inc., 1998), 200-201.

Within the 847 page report, citizenship issues were mentioned a handful of times. The report determined that the issuance of citizenship to all Native Americans through the 1924 Indian Citizenship Act did not alter their status as wards of the government. Federal guardianship was necessary because white government officials and the authors of this report commonly believed that Native Americans needed support in land rights issues and property ownership. The following paragraph from the Meriam Report outlines the connection between citizenship, the guardian-ward relationship, and policy concerning American Indian property:

This decision that citizenship and continued guardianship are not incompatible is not only sound law, it is also sound economic and social policy. In matters pertaining to the ownership and control of property many Indians are in fact children despite their age, and real friends of the Indians can best serve them by having guardianship continued until the Indians through training and experience reach a maturity of judgment which will permit them to control their own property with a reasonable chance of success.¹¹⁰

This previous paragraph specifically discusses the relationship between continued guardianship of American Indians and property rights, but it also makes an important description of Native Americans as “children.” This view of American Indians as “children” is declared at least three times in the Meriam Report—all relating to the handling of property, citizenship, and questions of competency. With respect to competency, the Meriam Report states, “Indian guardianship was assumed when the Indians as a race were unquestionably incompetent...His status

¹¹⁰ *The Problem of Indian Administration*, 754.

is that of a child below legal age, except that he can be declared competent whereas a child cannot be.”¹¹¹

The perception that Native Americans were “children” is a form of racial stigma. Racial stigma as Glenn Loury defines it is evident in the previous paragraph of the Meriam Report. The perception that “many Indians are in fact children despite their age...” suggests an element of racial superiority and dominance by whites over Native Americans. Adults care for children due to their inexperience and immaturity in most life skills; therefore, a generalized comparison of children to all Native Americans is an unabashed arrogance of white racial superiority. The racial stigma of American Indians as “children” coincides with the paternalistic guardian-ward concept where Native Americans as wards to the federal government were perceived to be incompetent and incapable to survive without the aid of their guardian.

Glenn Loury expanded upon the notions of racial stigma in his 2005 article, *Racial Stigma and its Consequences*. The “consequences” Loury finds with racial stigmas are their perpetuation.¹¹² Again speaking of the white perception of African Americans, he writes, “An important consequence of racial stigma is ‘vicious circles’ of cumulative causation: self-sustaining processes in which the failure of blacks to make progress justifies for whites the very prejudicial attitudes that, when reflected in social and political action, ensure that

¹¹¹ Ibid., 101.

¹¹² Glenn C. Loury, “Racial Stigma and its Consequences,” *Focus* 24, no. 1 (2005): 2.

blacks will not advance.”¹¹³ The perpetuation of racial stigma as Loury theorizes has its merits again with the paternalistic verbiage in the 1928 Meriam Report. The idea that American Indians needed guardianship from the federal government implies the racial stigma of them as incapable or incompetent of handling their own affairs, as is the perception of our children.

The “vicious circle” that the paternalistic attitude of the United States government over tribal communities had in fact further caused their perpetual wardship. The belief that American Indians needed to acculturate, and turn away from the tribalism or communalism of their culture had in fact damaged tribal communities more than it helped them. The Dawes Act is a case in point; the relatively quick process of stripping tribal communities of their lands and resources through allotment policy was not only deleterious to the communalistic nature of their cultures, but ample evidence argues it led to increased economic and social strife. White government officials assumed that the cultural ideals of Americanism were superior to the tribalism of Native American communities. The clash of cultures and the arrogance of cultural superiority by the United States government resulted in the perpetuity of the racial stigma of Native Americans as “children” or wards.

The Meriam Report states, “Citizenship is, as has been said, primarily an individual and political right. It, however, does not carry with it necessarily the

¹¹³ Ibid.

right to vote.”¹¹⁴ An explanation that the franchise is subject to state electorate requirements follows this statement. If the authors of the Meriam Report perceived Native Americans as “children,” with the uncertainty of enfranchisement, then essentially American Indians were distinguished as something along the lines of citizen children. Native Americans had become citizens, but in some states they were disallowed the right to participate in their own government. Like women before the Nineteenth Amendment, Native Americans had little to no voice in the society that conquered them. Therefore, it is not surprising to find that states with large populations of Native Americans like Arizona in 1928 would seek avenues to suppress their political power.

For four years, the enfranchisement of American Indians remained dormant in the Arizona political arena, until a new national general election arrived. The topic again became a heated debate resulting in a historic court case that would ultimately determine the legal status and civil rights of Native Americans in Arizona for the next two decades.

By May of 1928, questions again arose about the legitimacy of the Native American franchise. That month, W. H. Linville, the County Recorder of Maricopa County wrote the County Attorney’s Office requesting information as to whether reservation American Indians could or could not register and vote in the upcoming primary and general elections. Deputy County Attorney, Charles A. Carson Jr., responded with the opinion of the Maricopa County Attorney’s

¹¹⁴ *The Problem of Indian Administration*, 756.

Office. Carson cited two reasons why American Indians should not have the entitlement of voting privileges. The first reason was the contested residency requirement. The Maricopa County Attorney's Office held that since the state did not have jurisdiction over reservations, then those persons living on reservations did not technically qualify under the residency provision in paragraph 2879 of the Civil Code. The residency requirement stated that an individual was required to establish residency for at least one year in the state, and thirty days within the county and precinct of which he or she wished to register.¹¹⁵

Secondly, the office also considered that the wardship of American Indians negated their entitlement to vote. As wards, the Office determined that reservation Native Americans "... are not allowed to make contracts concerning their property." Therefore, they were, "under guardianship in the sense used in the statute fixing the qualification of electors..."¹¹⁶ Only those Native Americans who had left the reservation and established residency outside of the reservation were, according to the Maricopa County Attorney's Office, eligible by state law to register and vote in all elections. Carson concluded, "This is our opinion, notwithstanding the recent act of Congress declaring that all Indians are citizens of the United States. The State of Arizona has the right to fix the qualifications of

¹¹⁵ Charles A. Carson, Jr. to W. H. Linville, letter, May 24, 1928, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

¹¹⁶ Ibid.

its electors.”¹¹⁷ Carson’s conclusions on American Indian suffrage in 1928 were the opposite of Attorney General Murphy’s just four years earlier. Murphy and Carson would again be involved in determining the voting rights of Native Americans by the fall of 1928. Still serving as Arizona Attorney General, John W. Murphy and Attorney Charles A. Carson Jr. went on to become a part of the defense team for Mattie M. Hall, the county recorder of Pinal County and defendant in the 1928 *Porter v. Hall* trial. Charles A. Carson Jr. while serving as the Deputy County Attorney for Maricopa County in 1928 was also an attorney in the law firm, Dodd L. Greer, Cunningham and Carson. His partner, Dodd L. Greer, a Democrat, solicited Governor George W. P. Hunt for information on the legality of enfranchising Native Americans in Arizona.

By July, Governor Hunt, Dodd L. Greer, and Attorney General John W. Murphy, all belonging to the Democratic Party, were engaged in an excited conversation over the upcoming 1928 state and general election and plausibility that the new Native American voting bloc could swing a large number of votes for the opposing Republican Party. Murphy presented this concern back in July of 1924 when he wrote to his friend, Frank M. Gold, also a lawyer. Murphy feared then that the Republican Party, which had had federal control over the nation since the election of Warren G. Harding as president in 1921, would influence the

¹¹⁷ Ibid.

inexperienced native electorate.¹¹⁸ The summer before the 1928 election, Governor Hunt was pushing Attorney General Murphy to provide an opinion on the matter, and one that would serve the Democratic candidates like him, over the Republicans. On July 21, 1928, Attorney Dodd L. Greer received a telegram from Governor W.P. Hunt regarding the pending decision from Attorney General Murphy on the legality of reservation American Indian suffrage as it pertained to state law. Hunt's telegram reads, "Superior Court decisions in Arizona have held reservation Indians not entitled to vote, but non-reservation Indians no longer in status of wards of government are entitled to vote stop..."¹¹⁹ Hunt concluded by implying that the illiteracy clause of paragraph 2879 of the Civil Code would keep many American Indians from registering.

Greer responded immediately that same day to Governor Hunt. Writing from St. Johns, Arizona in Apache County, Greer speculated that the Republican Party had another agenda for registering Native Americans in his county other than for a liberal stance on civil rights. Greer wrote, "I have learned from authentic sources, that in order to assist John H. Udall, in case he is the republican candidate for Governor that an attempt will be made to register every person that

¹¹⁸ John W. Murphy to Frank M. Gold, letter, July 9, 1924, RG 4, Office of the Attorney General, Arizona State Archives, Phoenix, AZ.

¹¹⁹ George W. P. Hunt to Dodd L. Greer, telegram, July 21, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ.

will vote the republican ticket.”¹²⁰ Greer informed Governor Hunt of the consequences of registering such a potentially large voting bloc of American Indians, and interestingly enough Mexican Americans. In an impassioned tone, Greer wrote, “This will include some fifteen hundred navajo indians, and approximately five hundred mexicans [sic]. Of the five hundred mexicans which they propose to register not over 25% are qualified electors, and I feel confident that there are not fifteen indians now living off the reservations who are qualified electors [sic].”¹²¹ Strategically, Greer needed to argue reasons to disqualify these two groups of constituents from registering, in order to keep them from voting, in his mind, the Republican ticket. Greer declared, “I am thoroughly convinced that the reservation indians, are not qualified electors. The fact that the State court has no jurisdiction over them, and could not prosecute them for a violation of the election laws, is of itself [sic] sufficient regardless of the fact that they are wards of the Government (under guardianship) which disqualifies them under our statute.”¹²² Understanding the challenge of disenfranchising such a large citizenry in a Republican controlled county, Greer further stated,

There is absolutely no use to challenge, because the Republicans are in absolute control of each precinct where the indians and mexicans [sic] will be registered, and my idea to convince the county recorder of their disqualification to register, and thereby keep them off the register, if can

¹²⁰ Dodd L. Greer to George W. P. Hunt, letter, July 21, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ.

¹²¹ Ibid.

¹²² Ibid.

be done, if not then to bring an action and ask the court to enter an order canceling the registration [sic] of all persons shown to be disqualified.¹²³

After replying to Governor Hunt's telegram, Greer took action and without delay filed a complaint to the Apache County Recorder's Office as he said he would do in his letter. However, the Arizona chapter of the Republican National Committee straight away reacted to Greer's challenge. Seemingly aware of Greer's political strategizing Hiram S. Corbett of the Republican National Committee appealed to Attorney General Murphy for a reiteration of his 1924 opinion on the subject. Corbett asked Murphy, "It is my recollection that some few years ago you gave an opinion that the Indians living on Indian Reservations could register and vote in national and state elections."¹²⁴ Indeed Murphy had publically given that opinion in the *Arizona Republic* in 1924 just days after the passage of the Indian Citizenship Act. Corbett ended his letter requesting Murphy to provide yet another opinion on the topic to the Republican National Committee and all county recorders.

Even though Attorney General Murphy was out of the state in Seattle Washington, Governor Hunt strongly goaded Murphy to respond to his inquiry regarding American Indian enfranchisement.¹²⁵ With an impending election and

¹²³ Ibid.

¹²⁴ Hiram S. Corbett to John W. Murphy, letter, July 23, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ.

¹²⁵ Earl Anderson to John W. Murphy, telegram, July 25, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ.

the threat of the opposing political party gaining more votes, Hunt wasted no time on the matter. Murphy, outwardly irritated by Governor Hunt's full-court-press on him while he was in Seattle, wrote back to his assistant, "Dont [sic] Bill know that whites and Indians on reservation same position [.]. Does he want to challenge right to vote of patients government hospital [.]. Matter such importance that challenge means court proceeding if they wont [sic] wait my return one week [.]. Make best guess [.]."

Murphy's point about hospital patients was a reference to the guardian-ward argument. Clearly, Murphy's stance on American Indian voting rights had not changed since his 1924 opinion, but in just a few months, as Attorney General of the state, he would have to defend a county recorder who denied two Pima Indians the right to register as electorates.

The issue was no longer about civil rights as it was intended with the 1924 Indian Citizenship Act. In 1928, the question of American Indian enfranchisement was all political. Representatives from the Democratic Party felt it necessary to block the registration of any American Indians in apprehension that the populace would unanimously vote Republican. In turn, the Republican Party wanted the opposite result, and openly argued for Native American suffrage for the same belief that the constituency would vote for their party. There was not one recorded thought from the Arizona political leaders in 1928 that an individual American Indian might vote for one party or the other, because he or she was intelligent enough to choose candidates based on their own individual values rather than what their tribe may have encouraged.

It is unclear how Governor Hunt felt on the topic, but correspondence between him and select lawyers in the state suggest that his political agenda to become Governor of Arizona for a seventh term outweighed any sympathetic views he may have had for American Indian civil rights. That September, needing further legal advice on the matter, Governor Hunt appealed to Samuel L. Pattee of the Curley & Pattee Law Firm of Tucson, Arizona. Pattee “regret[tingly]” admitted that all American Indians were entitled voting privileges for a number of reasons.¹²⁶ Pattee reasoned that their citizenship status and the anti-discriminatory measures of the Fifteenth Amendment of the Constitution guaranteed their suffrage as did the language in the recent July 1928 Supreme Court decision of *Dennison v. State* authorizing a Hopi Indian and World War I veteran to serve as juror.¹²⁷ Pattee also believed that the guardian-ward argument did not hold much merit in the situation as well, writing, “[the statute] at that time ...obviously referred to ordinary guardianship which, as applied to adults means those persons who are under guardianship in the sense of a court having jurisdiction having appointed a guardian of the person or property of such a citizen on account of incompetency or inability to manage his own affairs...”

Pattee further asserted,

[even though] the relation of the government to Indians is sometimes spoken as a guardianship, it is not in the strict sense, the relation of a

¹²⁶ Samuel L. Pattee to George W. P. Hunt, letter, September 22, 1928, RG 1, Office of the Governor, SG 8, Governor George W. P. Hunt, Arizona State Archives, Phoenix, AZ.

¹²⁷ Ibid.

guardian and ward...such right of control does not in my judgment affect or modify or limit the particular grant of citizenship contained in the act of congress above mentioned. That an Indian is a member of a tribe and to a greater or less extent under the supervision of an Indian agent, would not seem in the least to affect his right of suffrage.¹²⁸

Again, Pattee brought up the Arizona Supreme Court decision to allow Native Americans to serve as jurors, because as Pattee argued the plaintiff suing for juror rights was an American Indian citizen residing on a reservation, which seemed to him to nullify the guardianship-ward argument.

Despite Pattee's acknowledgement of Native American suffrage in Arizona, he twice stated his "regrets" in coming to this conclusion.¹²⁹ In his opinion, the only way to block American Indian voter registration was to enforce state election laws regarding electorate qualifications. Pattee wrote, "Not knowing much about the extent of education among the Indians, I am unable to state what effect this will have, but presumably, at least among the older generation, no great percentage of them will be able to comply with our requirements."¹³⁰ He continued, "Again, to prevent an influx of unintelligent Indian votes, which would be cast without any knowledge of why they were voting the way they did, it might be well to adopt a systematic course of challenging Indians at the time of election, which course, if persisted in, would probably result in limiting the numbers seeking the vote." Pattee's attitude of

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

white racial superiority had finally shown its full colors by the end of the letter to Governor Hunt. His response to Governor Hunt was an opinionated mix of political and racial tones.

As a white man, Pattee, along with other political and legal officials in Arizona of the time felt, the threat of enfranchising such a large minority population in the state. Pattee asked the Governor if he had read the recent article in the *Literary Digest*. The article Pattee suggested discussed the impact of the new Native American voting bloc in certain states with large populations of American Indians—Arizona being one of them. The article stated, “Arizona, New Mexico, Montana, and South Dakota are other States in which, with the balloting close, practically solid voting by Indians would be influential in determining the outcome.”¹³¹ The “outcome” the article referenced was of course the upcoming 1928 election in which Native Americans in most states would for the first time cast a ballot as part of the electorate. Pattee ended his letter with a slamming affront on the political acumen of Native Americans, “I realize that this subject is one that might cause some concern in class of votes so lacking in intelligence as to vote unanimously for one party, without having the slightest idea of any reason for doing it, and presents a dangerous situation in any community, and this without any regard to which party they favor.”¹³² Yet, Pattee’s letter came too late for Governor Hunt to take any action; the Superior

¹³¹ “Original American’s First Vote,” *The Literary Digest*, September 22, 1928, 17.

¹³² *Ibid.*

Court had already filed a *writ of mandamus* on September 18, 1928, ordering County Recorder Mattie M. Hall to register Pima Indians, Peter H. Porter, and Rudolph Johnson, on the Casa Grande precinct poll books.¹³³

On August 10, 1928, Peter H. Porter and Rudolph Johnson filed registration affidavits before a qualified Deputy County Recorder for registration within the Casa Grande precinct. Porter and Johnson were Pima Indians residing on the Gila River Indian Reservation near Sacaton in Pinal County. They had lived on the reservation their whole lives, and did not own any property outside of the reservation. The 1928 election year was the first year in which the two had a real opportunity to cast their vote in state and general elections since the passage of the Indian Citizenship Act in 1924. The two men, eager to take advantage of their new rights as American citizens trekked to the Pinal County Recorder's Office to register as Democrats before the primary election scheduled for September 11, 1928. Mrs. Harbison, the Deputy County Recorder initially accepted their applications for registration, but County Recorder Mattie M. Hall rejected the applications once they came across her desk disallowing the entrance of Porter and Johnson's names into the poll books of the Casa Grande Precinct, and withholding the certification of their names from the great register of the state.¹³⁴

¹³³ "Alternative *Writ Of Mandamus* Is Issued by Supreme Court in Case Of Indians Who Were Denied Vote," Arizona Republic, September 19, 1928.

¹³⁴ Ibid.

Superior Court Judge Frank O. Smith filed a *writ of mandamus* on September 18, 1928 ordering County Recorder Hall to register Porter and Johnson as voters within Pinal County. Furthermore, if Hall continued to refuse to register the two men, Judge Smith filed an alternative *writ of mandamus* commanding Hall to appear before the Arizona Supreme Court by 10:00 am on September 25, 1928 to show cause for her denial to register the two men.¹³⁵ County Recorder Hall stood her ground and continued to reject Porter and Hall's application for voter registration; therefore, the Arizona Supreme Court received the submission of case 2793 *Porter et al v. Hall* on October 29, 1928. Having missed their opportunity to vote in the primary election as Democrats, the clerk of the Supreme Court pushed Porter and Johnson's trial forward, in case a positive outcome would enable Porter and Johnson the right to vote in the upcoming general election on November 6, 1928.¹³⁶ It was the first trial in Arizona to test whether Native American citizenship rights from the federal 1924 Indian Citizenship Act guaranteed enfranchisement according to Arizona state law.¹³⁷

Only a small number of prominent government officials supported Porter and Johnson's cause. Superior Court Judge Frank O. Smith who ordered the *writ*

¹³⁵ "Registration of Indians Legal, Says Decision," Arizona Gazette, September 19, 1928; "Indians Can Vote- Court Decision," Casa Grande Valley Dispatch, September 21, 1928.

¹³⁶ *Porter et al. v. Hall* 2793 (Supreme Court of Arizona, Lexis Nexis Academic, November 2, 1928) 4; "Supreme Court Rules Indians Living on Reservations Not Entitled to Vote: Decision on Guardianship Clause Issued," Arizona Republic, November 3, 1928.

¹³⁷ "Court Hears Indian Ballot Case on Appeal," Arizona Republic, October 31, 1928.

of mandamus also later served as council from the Indian Rights Association for the plaintiffs in the Arizona Supreme Court trial, *Porter v. Hall*. The Indian Rights Association was a prominent national reform organization founded in 1882 in Philadelphia, Pennsylvania. According to the association's constitution, "The object of the Association shall be to secure to the Indians of the United States the political and civil rights already guaranteed to them by treaty and statutes of the United States."¹³⁸ Unquestionably, through his involvement in ordering the *writs of mandamus* and in the subsequent Supreme Court trial, Judge Smith was actively following the tenets of the Indian Rights Association, of which he was a member and believed Native American citizens of Arizona had the right to vote. The influence of the association was evident through Judge Smith's participation in the *Porter v. Hall* trial.

Superintendent B. P. Six of the Bureau of Indian Affairs intervened on behalf of Porter and Hall. Superintendent Six provided orders from the government to the Superior Court affirming that all Native Americans had voting privileges through the 1924 Indian Citizenship Act.¹³⁹ Six's involvement is not surprising considering the active role Commissioner Burke played in 1924, when he advocated for Native American suffrage in Arizona according to the act. Four years later, the issue became yet another battle for state rights between the federal government and the State of Arizona. Although, once the case went to the

¹³⁸ Report of the Indian Rights Association, 1884, 5-6, quoted in Prucha, *The Great Father*, 616n.

¹³⁹ "Indians Can Vote- Court Decision," Casa Grande Valley Dispatch, September 21, 1928.

Arizona Supreme Court, the Bureau of Indian Affairs had no further power to stop an unfavorable ruling.

The plaintiff and defense teams of the *Porter v. Hall* trial had a number of prominent legal minds of Arizona at the time. John B. Wright the U.S. District Attorney for the District of Arizona, Edward Smith the Special Assistant to the U.S. Attorney, and the law firm Kibbey, Bennett, Gust, Smith and Lyman composed the legal counsel for plaintiffs Porter and Johnson with the guidance of Superior Court Judge Frank O. Smith, member of the Indian Rights Association. Arizona Attorney General John W. Murphy headed the defense team for County Recorder Mattie M. Hall along with Frank J. Duffy, the Assistant Attorney General, and Charles Carson Jr. the Deputy County Attorney of Maricopa County and member of the Green, Cunningham and Carson law firm. Ernest W. McFarland the future Arizona Supreme Court Justice, U.S. Senator, and Arizona Governor also represented County Recorder Hall as the Pinal County Attorney.

After its submission on October 29, 1928, case 2793 *Porter v. Hall* was decided five days later on November 2, 1928 and just days before the general election day of November 6, 1928. Unfortunately, Porter and Johnson would never make it to the polling centers on Election Day, because the Arizona Supreme Court ruled against them denying their right to suffrage. The Casa Grande Dispatch reported the court's decision on November 8, 1928: "The decision effected over a hundred votes in this precinct of Indians on the Pima

reservation and thousands of Indians in the state who had hoped to cast their first presidential ballot [sic].”¹⁴⁰

The Supreme Court justices heard several arguments from both sides, but in the end, it was the dispute over what federal guardianship over American Indians truly meant according to state law and its applicability to voting rights that determined the outcome of the case. In their memorandum brief, the plaintiff’s team presented the requirements of the state electorate in paragraph 2879 of the state Civil Code (Section II Article VII of the Arizona State Constitution):

The Constitution of the State of Arizona and the statutes of the State of Arizona, Section 2, Article VII, Constitution, paragraph 2879, Civil Code, R.S.A., 1913, provides that all citizens of the State for one year next preceding the election and of the County and Precinct for thirty days, and who are able to read the Constitution of the United States in the English language in such a manner as to show that they are not reciting from memory, and who are not idiots, insane persons or *non compos mentis* or under guardianship or convicted of treason or of felony and not restored to civil rights, shall be deemed electors of the State of Arizona and entitled to register for the purpose of voting at all elections.¹⁴¹

The two prominent arguments in the case, which the prosecution and defense disputed, were over residency requirement and guardianship. The residency argument asked whether reservation American Indians qualified as electors under the residency requirements of the Civil Code. The second debate was over the meaning of the words “under guardianship” in the Civil Code and whether

¹⁴⁰“Indians Barred from Voting Tuesday,” Casa Grande Valley Dispatch, November 8, 1928.

¹⁴¹ Memorandum Brief of Plaintiffs and Petitioners for *Writ of Mandamus*, *Porter v. Hall*, 34 Ariz. 308; 271 P. 411, 1948, Clerk of the Court, Arizona Supreme Court, Phoenix, AZ, 2.

American Indians were “under guardianship” according to the interpretation of the statute.

The plaintiff’s team used the recent decision in the 1928 *Denison v. State* trial to make the case that reservation American Indians in Arizona qualified for the electorate. The *Denison v. State* burglary trial challenged “full-blooded” Hopi Indian W.H. Dolton as a qualified juror.¹⁴² In the case, the Supreme Court justices ruled that Dolton was eligible as a juror according to paragraph 3516, of the Civil Code, which read,

Every juror, grand and petit, shall be a male citizen of the United States, a resident of the county for at least six months next prior to his being summoned as a juror, sober and intelligent, of sound mind, and good moral character, over twenty-one years of age and shall understand the English language. He must not have been convicted of any felony or be under indictment or other legal accusation of larceny or of any felony.¹⁴³

Therefore, since the Arizona Supreme Court determined that Dolton, a male Hopi Indian, met the residency requirements to be a juror, and because he lived his entire life on an Arizona reservation, then it was assumed that Porter and Johnson also qualified as electors under the residency requirement, because they were Pima Indians who had also lived their whole lives on the Gila River Indian Reservation within the boundaries of the State of Arizona.¹⁴⁴ The Supreme Court agreed with the plaintiff’s argument for residency based on several other law

¹⁴² *Denison v. State* 681(Supreme Court of Arizona, Lexis Nexis Academic, June 30, 1928), 1.

¹⁴³ *Ibid.*, 2.

¹⁴⁴ Memorandum Brief of Plaintiffs and Petitioners for *Writ of Mandamus*, 4.

cases and ruled that the, “Plaintiffs, therefore, under the stipulation of facts, are residents of the state of Arizona, within the meaning of section 2, article 7, *supra*.”¹⁴⁵

Juror Dolton, described as a “full-blooded” Hopi Indian incites some interesting social questions about the *Porter v. Hall* trial. Professor of Politics and Government, Lauren L. Basson of the Ben-Gurion University in Israel asserts in her book, *White Enough to Be American? Race Mixing, Indigenous People, and the Boundaries of State and Nation*, that biracial individuals throughout American history have challenged the inconsistencies of monoracially constructed sociopolitical boundaries and customary racial categories. Part-indigenous people have especially exposed the reality of the white dominating class using a combination of universalistic and ascriptive principles to achieve cultural hegemony in United States society. Universalistic principles, Basson explains, are “inclusive” measures designed for the mutual equality of all citizens, whereas ascriptive principles assign rights and responsibilities to people based on distinguishing characteristics such as race, gender, religion, and ethnicity. Basson argues that it was race that was the leading ascriptive principle used to describe national membership requirements.¹⁴⁶

¹⁴⁵ *Porter et al. v. Hall* 2793, 6.

¹⁴⁶ Lauren L. Basson, *White Enough to Be American? Race Mixing, Indigenous People, and the Boundaries of State and Nation* (Chapel Hill, NC: The University of North Carolina Press, 2008), 2.

Secondly, mixed-blooded American Indians challenged citizen eligibility requirements, because their mixed heritage did not fit into previously prescribed monoracially constructed sociopolitical boundaries.¹⁴⁷ Third, mixed-race Native Americans tested previously understood social codes that paired “whiteness” with being “civilized.”¹⁴⁸ Based on Basson’s thesis statement, the question begs if the juror Dolton had been part white, would his eligibility as a juror ever have been questioned? If Porter and Johnson were mixed-blooded American Indians, would County Recorder Hall have allowed them to register to vote?

The debate over the phrase “under guardianship” in paragraph 2879 of the Civil Code determining the requirements of the electorate was much more heated and complicated. In order to win the case, the plaintiff’s team effectively had to challenge the wardship status of Porter and Johnson by arguing that the two men had the individual legal status of *sui juris*—meaning essentially an individual’s full legal competency. In their memorandum brief, the plaintiff’s team wrote, “The question was asked during the oral argument whether a white man in the same status as an Indian would be considered *sui juris*. We have no hesitancy in

¹⁴⁷ Ibid., 4-9.

¹⁴⁸ Ibid., 8-9. For more information on the connection between blood quantum and legal conceptions of American Indian competency see, Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln, NE: University of Nebraska Press, 2001). In a related matter, Katherine Benton-Cohen’s book, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands*, also talks about changing notions of what it was to be an American during the Bisbee deportation in Arizona. See Katherine Benton-Cohen, *Borderline Americans: Racial Division and Labor War in the Arizona Borderlands* (Cambridge: Harvard University Press, 2009).

answering such a question in the affirmative...”¹⁴⁹ Did a Native American have the same legal status as a white man? Ultimately, this question would take over the case and determine its outcome.

The plaintiff’s team gave several examples to support the point that the plaintiffs, Porter and Johnson, had the legal status of *sui juris*. The plaintiffs, they asserted were not minors, they had the right to exit and enter the reservation at any time, make contracts of employment, purchase, or sale, and owned property that the United States government did not control. Concerning any supervision of tribal property or livestock, they further insisted, “the function of the United States Government is limited to that of trustee.”¹⁵⁰ In addition, while still members of the Pima Indian Tribe; both Porter and Johnson were not subject to the jurisdiction of the tribe.¹⁵¹ Therefore, the plaintiff’s team argued, Porter and Johnson were “in every sense of the word... *sui juris*.”¹⁵²

The plaintiff’s legal team further maintained that the phrase “under guardianship” in paragraph 2879 of the Civil Code did not ever intend to reference American Indians. The plaintiff’s legal counsel contended that when state legislators wrote the statute in 1913, they did not have any consideration that Native Americans in Arizona would eleven years later in 1924 become citizens of

¹⁴⁹ Memorandum Brief of Plaintiffs and Petitioners for *Writ of Mandamus*, 9.

¹⁵⁰ *Ibid.*, 8.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

the United States; therefore, the phrase “under guardianship” did not apply to American Indians.¹⁵³

In opposition, the defense team contended that Porter and Johnson did not maintain the legal status of *sui juris* and were therefore wards of the state. In their opinion, the members of the Pima Indian Tribe and any residents of the Gila River Indian Reservation were “under the jurisdiction of the United States government and the regulations thereof,” because “the government of the United States exercises complete and detailed jurisdiction, supervision, and control over the persons, property, and commerce of the said Pima Indian Tribe.”¹⁵⁴

In the end, the Arizona Supreme Court rejected the plaintiff’s *writ of mandamus* ordering County Recorder Hall to register them as electors. Justice Alfred C. Lockwood gave the court’s opinion, and Justice J. McAlister concurred. The majority interpreted the phrase “under guardianship” as someone the opposite of having the legal status of *sui juris*. According to the majority opinion, a person under guardianship and persons described as insane or having *non compos mentis* had the common denominator of an inability to manage their own affairs and required assistance from the state to do so—in contrary to a person with *sui juris* who was competent enough to handle their own affairs without government assistance. Therefore, the court concluded, “It is apparent to us that it was the

¹⁵³ Ibid., 10.

¹⁵⁴ Answer of Defendant to Order to Show Cause, *Porter v. Hall*, 34 Ariz. 308; 271 P. 411, 1948, Clerk of the Court, Arizona Supreme Court, Phoenix, AZ, Section VII.

purpose of our Constitution, by these three phrases, to disfranchise all persons not *sui juris*, no matter what the cause, and its justice is plain.”¹⁵⁵

After establishing that the phrase “under guardianship” disallowed anyone identified as a ward of the government the franchise, the court had to connect this status to Native Americans. The court held that all American Indians were in fact wards of the state and cited numerous court cases to support their ruling. The first case they cited was unsurprisingly *Cherokee v. Georgia*, the near century old 1831 United States Supreme Court landmark trial in which Chief Justice John Marshall opined that the relationship of Native Americans to the federal government “resembles that of a ward of his guardian.”¹⁵⁶ Based upon this citation and several others, Justice Lockwood determined that “guardianship was founded on the idea that the Indians were not capable of handling their own affairs in competition with the whites, if left free to do so.”¹⁵⁷ Justice Lockwood also cited the 1884 U.S. Supreme Court trial *Elk v. Wilkins*: “The Indians themselves cannot suspend that relation without the consent of the government, and it is for Congress alone to say when and how such relationship shall be terminated.”¹⁵⁸ Even though only Congress had the power to end federal

¹⁵⁵ *Porter et al. v. Hall* 2793, 7.

¹⁵⁶ *Cherokee Nation v. State of Georgia*, 30 U.S. 1 (1831).

¹⁵⁷ *Porter et al. v. Hall* 2793, 7.

¹⁵⁸ *Elk v. Wilkins*, 112 U.S. 94 (1884).

guardianship over Native Americans, Justice Lockwood reasoned that the 1924 Indian Citizenship Act did not sufficiently terminate the relationship.¹⁵⁹

Next, the court had to decide whether the plaintiffs categorized as persons under guardianship according to their interpretation of Arizona state law. Ultimately, it was the first residency argument that would hurt the plaintiff's case. Justice Lockwood determined that since Porter and Johnson had lived their entire lives on a federal Indian reservation that they were subject to the jurisdiction of the federal government and all its laws. Furthermore, as residents of the Gila River Indian Reservation, Porter and Johnson were also liable to the jurisdiction of the Court of Indian Offenses—a federal court. Therefore, based on these conclusions, Justice Lockwood contended that the plaintiffs were wards of the United States government.¹⁶⁰

The concluding paragraph of Justice Lockwood's opinion flatly refuses Porter and Johnson the right to vote, because of their wardship status with the federal government. Justice Lockwood wrote,

Whenever that government shall determine in regard to any Indian or class of Indians that they are so released, and that their status in regard to the responsibilities of citizenship is the same as that of any other citizen, the law of this state considers them no longer "persons under guardianship" within the meaning of section 2, article 7, of our Constitution, and they will be entitled to vote on the same terms as all other citizens. But so long as the federal government insists that, notwithstanding their citizenship, their responsibility under our law differs from that of the ordinary citizen, and that they are, or may be, regulated by that government, by virtue of its

¹⁵⁹ *Porter et al. v. Hall* 2793, 8.

¹⁶⁰ *Porter et al. v. Hall* 2793, 9.

guardianship, in any manner different from that which may be used in the regulation of white citizens, they are, within the meaning of our constitutional provision, "persons under guardianship," and not entitled to vote.¹⁶¹

Justice Lockwood's concluding statement rejected any obligation of the State of Arizona to reward voting privileges to American Indians based on their legal wardship status with the federal government. Lockwood notes that the federal government's special "regulation" of American Indians "differs from that of the ordinary citizen." Therefore, in his opinion, the State of Arizona had no reason to award suffrage to a class of citizens who were considered outside of the norm, according to his views. Lockwood's locution of legal opinion links to Edward Said's theoretical concept of the "Other," which describes those individuals or group of individuals that are on the fringe of society. Furthermore, Lockwood addresses perceived racial divisions, by equating an "ordinary citizen" with "white citizens."

Chief Justice Henry D. Ross gave the dissenting opinion that Porter and Johnson were guaranteed the franchise because of the "general and all-inclusive" wording of the 1924 Indian Citizenship Act, which awarded the plaintiffs United States citizenship.¹⁶² Furthermore, Ross addressed the use of the word "resembles" in the expression coined by Chief Justice Marshall in the 1831 *Cherokee v. Georgia* U.S. Supreme Court trial. He wrote, "The status of

¹⁶¹ Ibid., 10.

¹⁶² Ibid.

guardianship disqualifying one to vote, in my opinion, is one arising under the laws providing for the establishment of that status after a hearing in court. It is not a status that ‘resembles’ guardianship, but legal guardianship, authorized by law.”¹⁶³ Therefore, he reasoned that the phrase “under guardianship” in the Arizona Constitution did not pertain to Native Americans, because the statute specifically referenced a legal status determined by a state court. He concluded his statement reasoning that perhaps Native Americans “should not, as a matter of public policy, be granted the franchise” because of their legal status with the federal government, but according to his interpretation of Arizona law, there was no reason in his mind to deny the vote to Native Americans.¹⁶⁴

Nevertheless, Chief Justice Ross was the minority in the case, and the Arizona Supreme Court rejected Porter and Johnson’s plea for suffrage. The outcome of the trial drew local and national attention. It made front-page headlines in the Phoenix edition of the *Arizona Gazette* with the subheading: “Ruling Hits Thousands in State: Judge Holds Redmen Are Wards of the State.”¹⁶⁵ The article concluded with the following statement: “The decision affects the voting status of several thousand reservation Indians in Arizona, so

¹⁶³ Ibid., 10-11.

¹⁶⁴ Ibid., 11.

¹⁶⁵“Court Decision Bars Voting By Indians: Ruling Hits Thousands in State,” *Arizona Gazette*, November 2, 1928.

long as they remain in the guardianship of the government.”¹⁶⁶ The *New York Times* also reported on the trial’s conclusion in its November 4, 1928 article, “Arizona Court Holds Indians On Reservations Cannot Vote.”¹⁶⁷ The short article began with the declaration that the court’s decision affected “the voting status of several thousand Indians living on reservations in Arizona” despite the “Congressional act of June 2, 1924, which declared them citizens of the United States.”¹⁶⁸

Evidence suggests that a layer to the story surrounding the *Porter v. Hall* trial was purely political—members of the Democratic Party attempted to refuse any American Indian the right to register to vote in fear that the newly voting constituency would unanimously vote for the opposing party. In contrast, members of the Republican Party challenged the denial of American Indian suffrage for the opposite reason. Therefore, it is ironic that the two Pima Indians endeavored to register as Democrats in the 1928 primary election. Perhaps in hindsight, Governor Hunt would have rethought his party’s position on the matter if he had known he was to lose the 1928 gubernatorial election. More voting Democrats like Porter and Johnson could have changed the outcome of the election in his favor. After the Supreme Court ruling, the decision was

¹⁶⁶ Ibid.

¹⁶⁷ “Arizona Court Holds Indians On Reservations Cannot Vote,” *New York Times*, November 4, 1928.

¹⁶⁸ Ibid.

telegraphed to all the county attorneys and election board officials in the state in preparation for Election Day.¹⁶⁹

Despite the majority of white government officials involved in the 1928 *Porter v. Hall* trial who supported the disenfranchisement of Native Americans either for political or racial reasoning, there were white government officials who did not. Commissioner Burke, Superintendent Six, Superior Court Judge Frank O. Smith and a few county attorneys advocated on behalf of American Indian voting rights in this time period. Their political stance on this manner suggests that the racial tensions surrounding the trial are complex. While a majority of white government officials successfully suppressed the native vote, it does not mean that the dominant white ruling class was monolithically racist or uniformly had paternalistic feelings about white-Indian relations. The representation of the minority white opinion on this matter demonstrates that the racial stigma of Native Americans was not always so black and white. Indeed, the changing American society of 1930s and 1940s, and influential events like the Indian Reorganization Act, the Indian New Deal, and especially the impact of World War II produced a changing perception of American Indians within the United States and in Arizona. Once American Indians were publically recognized in Arizona as American heroes for their service in the war, the necessity to change their voting status became more obvious.

¹⁶⁹ "Indians Barred from Voting Tuesday," Casa Grande Valley Dispatch, November 8, 1928.

CHAPTER 3

"A MANIFESTATION OF DEMOCRACY."

"...I am in question as to my citizen rights in this state..." wrote Harvey E. West a self-described "half-blood" in a letter to Arizona Governor Sidney P. Osborn on November 16, 1947.¹⁷⁰ During World War II, West spent five years as a volunteer with the Arizona National Guard and was discharged in 1945 as a First Lieutenant in the Transportation Corps of the 158th Infantry of Arizona. Born in Kansas City, Missouri, West in 1947 was completing a master's degree in education at the Arizona State University in Flagstaff, Arizona.¹⁷¹ West was an American citizen of the highest potential as a veteran of the Arizona National Guard and a master's student. His education and service to the state of Arizona should have certainly earned him respect. Unquestionably, as an individual, West's background deflated the argument for federal guardianship, but, despite his stellar record, even West doubted his own legal status in Arizona. Why did he feel the need to question his civil standing with Governor Osborn in 1947?

Harvey E. West was an individual outside of the norm. Who or what is considered normal or accepted is determined by mainstream society. In America, the norm was to be non-Indian. Being an American Indian, West was not sure where he stood as a citizen in Arizona. The stigma of his Indianness forced him

¹⁷⁰ Harvey E. West to Sidney P. Osborn, letter, November 16, 1947, RG 1, Office of the Governor, SG 14, Governor Sidney P. Osborn, Arizona State Archives, Phoenix, AZ.

¹⁷¹ Ibid.

to question his citizenship status with his Governor despite his background as an educated and respected member of the Arizona National Guard.

Harvey West, was a citizen of the highest potential, yet he himself questioned the validity of his citizenship within Arizona. West felt the need to write to his governor, because as a person of Native American descent in Arizona, he was ultimately questioning the state government's reasons for restricting the civil rights of Native Americans. The restriction of civil rights towards citizens is reminiscent of Gyanendra Pandey's concept of the subaltern citizen. Unable to vote in Arizona, West wanted to know the reasoning behind his "second-class" citizenship. Little did West know when he was writing a letter to his governor on November 16, 1947, that eight days prior other Native Americans in Arizona had also forcefully attempted to test their own subaltern citizen status. On November 8, 1947, Frank Harrison and Harry Austin, Yavapai Indians from the Fort McDowell Indian Reservation, walked into the Maricopa County Recorder's Office in Phoenix to register to vote.

Frank Harrison and Harry Austin attempted to register as Democrats for the upcoming primary and general election to be held the following year in 1948. The Maricopa County Recorder, Roger G. Laveen, refused to register Harrison and Austin, on the sole premise that the two men were reservation American Indians. Laveen was simply following the state election law, which disallowed Native Americans as eligible voters. According to the original Arizona State Constitution, American Indians residing on reservations were considered to be

ineligible to vote, by the reason that they were “under guardianship” of the federal government—an interpretation of the State Constitution that barred anyone “under guardianship” from voting. Based on their wardship relationship with the federal government, the 1928 *Porter v. Hall* trial implemented this reading of the state election law, which resulted in the disenfranchisement of reservation American Indians in Arizona for the next twenty years.

Before he enlisted with the United States military during World War II, Frank Harrison worked for the federal government on the construction of the Bartlett Dam on the Verde River. Many American Indians in the area tried to get construction jobs at the dam site but were rejected for the positions. Adamant that he was qualified for employment at the dam site, Harrison kept applying and persevered. At last, Harrison and a number of other Native American men were admitted to unions and hired. Harrison learned from the experience that “persistence led to success.”¹⁷² When Harrison returned to his reservation after the war, he observed his parents and other elderly members in his community enduring financial hardship. Aware that the state government denied federal benefits guaranteed through the Social Security Act to his parents and others in his community, Harrison felt he could no longer tolerate the status quo. He spoke with Harry Austin the Tribal Chairman and the two of them contacted United States Representative for Arizona, Richard F. Harless, along with Lemuel P.

¹⁷² *The History of Indian Voting in Arizona*, DVD, produced by the Inter Tribal Council of Arizona, Inc., 2004.

Mathews and Ben P. Mathews, lawyers known on the reservation to work on behalf of other individual American Indians in legal cases.¹⁷³

Representative Harless with the assistance of attorneys, Lemuel and Ben Mathews filed a *writ of mandamus* ordering County Recorder Laveen to register Harrison and Austin within the Scottsdale precinct and on the general register of Maricopa County. Following the established doctrine of the 1928 *Porter v. Hall* ruling, Judge Thomas J. Croaff of the Maricopa County Superior Court rejected their *writ of mandamus* and dismissed the case. The plaintiffs, subsequently, appealed to the Arizona Supreme Court. Chief Justice R.C. Stanford and Justice Arthur T. LaPrade heard the case along with recently appointed Justice Levi Stewart Udall who gave the unanimous opinion. On July 15, 1948, the Arizona Supreme Court voted to reverse the decision of the lower court and consequently overturned the ruling in the 1928 *Porter v. Hall* trial. The reversal, thus declared the eligibility of reservation Native Americans as electors if as individuals they also met the other electorate qualifications stated in the Arizona State Constitution. Representative Harless proclaimed the court's decision, "a manifestation of democracy."¹⁷⁴

The fact that the Arizona Supreme Court of 1948 overturned a ruling it made in 1928 is a remarkable and infrequent instance. By the time, Harrison and Austin walked into the Maricopa County Recorder's Office in 1947; American

¹⁷³ Ibid.

¹⁷⁴ Claiborne Nuckolls, "Ruling Ends 20-Year-Old Adjudgment: Majority Still Barred By Requirements To Register," Arizona Republic, July 16, 1948.

Indian policy in the United States and in Arizona had already ebbed and flowed to a new course of further integration and recognition of tribal rights. During the last two decades, while American Indians remained disenfranchised in the State of Arizona, two epic national events reverberated their influence onto the state level. The Great Depression of the 1930s challenged government officials on Capitol Hill to readdress the role of the Bureau of Indian Affairs and established American Indian policy. In turn, World War II challenged the social fabric of American society. Indeed, the events and actions surrounding the Great Depression and World War II influenced the Arizona Supreme Court in 1948 to reverse its decision in a Native American voting rights trial exactly twenty years earlier.

With the inauguration of President Franklin D. Roosevelt in 1933, the United States underwent a series of liberal economic policies that became known as the New Deal. The New Deal pumped millions of governmental dollars back into the economy through numerous innovative nation-building programs and projects. The government support through the New Deal stimulated the economy and saved thousands of American citizens from further economic strife. The 1930s was an era ripe for change within the federal government. When President Roosevelt appointed John Collier as commissioner of the Bureau of Indian Affairs in 1933, he endeavored to radically change American Indian policy through his

new position.¹⁷⁵ For the next twelve years, Collier directed the Bureau of Indian Affairs through one of the agency's most challenging times. Arguably, Collier's greatest achievement was the Indian Reorganization Act of 1934, which he helped push through Congress.

Many of the inadequacies and problems regarding the welfare of American Indians in the United States found in the 1928 Meriam Report were partially resolved through the Indian Reorganization Act, and many of the report's recommendation's utilized.¹⁷⁶ The Wheeler-Howard Bill that became the Indian Reorganization Act was a forty-eight page document with four major sections. Secretary of the Interior, Harold Ickes strongly supported the act. In a letter to Burton K. Wheeler, Chairman of the Committee of Indian Affairs of the U.S. Senate and Edgar Howard, Chairman of Committee of Indian Affairs of the House of Representatives, Ickes quickly summed up the purpose of the bill,

The bill itself contains a clear statement of its purpose, which may be briefly summarized as the restoration to the Indians of fundamental human

¹⁷⁵ Peter Iverson, *"We Are Still Here": American Indians in the Twentieth Century* (Wheeling, IL: Harlan Davidson, Inc. , 1998) 79. John Collier's career in American Indian affairs largely began with the foundation of the American Indian Defense Association in 1923. For further discussion on the Indian New Deal and the Indian Reorganization Act, see Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln: University of Nebraska Press, 1980); Donald L. Parman, *Navajos and the New Deal* (New Haven: Yale University Press, 1976), and Laurence M. Hauptman, *The Iroquoise and the New Deal* (Syracuse, NY: Syracuse University Press, 1981).

¹⁷⁶ Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin: The University of Texas Press, 1983), 14.

rights, which have been impaired by a constantly increasing bureaucratic supervision over life and property.¹⁷⁷

In a speech, probably prepared for Congress, Felix S. Cohen, the assistant solicitor in the Solicitor's Office of the Department of the Interior wrote,

This bill is the most progressive measure in all Indian legislation. It helps the Indian to overcome the three fundamental obstacles to progress: First, the Indian's lack of education; second, his lack of economic opportunities; and third, his subjection to despotic bureaucracy.¹⁷⁸

The act was an experimental measure written by white government officials, like Collier.¹⁷⁹ Congress and Collier's administration, however, did establish referendums on reservations across the country so that tribes could vote on the bill. Most of tribal communities (181 tribes) voted in favor of the bill and seventy-seven rejected it, including the Navajos.¹⁸⁰ The Navajos, the largest tribe, voted against the bill, because of Collier's livestock reduction program—that reduced their herds of sheep and hurt them economically. Collier contended that his separate livestock program had nothing to do with the bill, but it was to no avail.¹⁸¹

¹⁷⁷ Harold L. Ickes to Burton K. Wheeler and Edgar Howard, letter, undated ca. 1934, Felix S. Cohen Papers, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library, Yale University, New Haven, CT.

¹⁷⁸ Felix S. Cohen, "Will this bill segregate the Indians and send them back to the blanket?", Speech, undated ca. 1934, Felix S. Cohen Papers, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library, Yale University, New Haven, CT.

¹⁷⁹ Josephy, Jr., "Modern America and the Indian," 205.

¹⁸⁰ Prucha, *The Great Father*, 964-965; Deloria, Jr., *American Indians*, *American Justice*, 14, 15; Iverson, *"We Are Still Here,"* 93-94.

¹⁸¹ Prucha, *The Great Father*, 965-966.

Perhaps the most significant measure was the act's termination of the allotment system.¹⁸² Collier and his supporters recognized the devastating effects the allotment system had on tribal communities both economically and socially. An estimated 90 million acres of tribal lands were lost to white consumers and government appropriations.¹⁸³ Instead, the act lengthened the trust status on currently existing properties for an indefinite period; returned surplus lands to their original tribal owners; allowed individual parcels to be returned to the tribe as communal property, and additionally, the act allocated two million dollars annually for the procurement of further tribal lands.¹⁸⁴

Another radical aspect of the Indian Reorganization Act was its policy for American Indian self-government. The premise of this measure was to give tribal communities more authority by adopting their own governments. This reorganization process, however, required "Federally approved" tribal constitutions and tribal councils.¹⁸⁵ In the end, critics claimed the emulation of American democratic ideals imposed upon the traditional governmental values of individual tribes. Critics of this aspect of the Indian Reorganization Act, many of them American Indians, felt that the United States government was once again

¹⁸² Josephy, Jr., "Modern America and the Indian," 202; Deloria, Jr. and Lytle, *American Indians, American Justice*, 14.

¹⁸³ Josephy, Jr., "Modern America and the Indian," 202.

¹⁸⁴ Prucha, *The Great Father*, 962.

¹⁸⁵ Josephy, Jr., "Modern America and the Indian," 202; Iverson, *"We Are Still Here,"* 89-90.

coercing dominant white cultural values upon tribes.¹⁸⁶ In turn, the act also began a slow process of decentralizing the Bureau of Indian Affairs, by redistributing more authority back onto tribal communities through their new governmental systems.¹⁸⁷ A third important component of the act was the establishment of a ten million dollar revolving credit fund for economic revitalization.¹⁸⁸ The Act also provided a \$250,000 stipend in support of American Indian vocational and trade education.¹⁸⁹

In a resolution to Commissioner Collier, the Apache of the White Mountain Apache Indian Reservation supported self-government, but for the tribe in 1934, tribal leaders felt that they were “not capable” of self-government for the time being.¹⁹⁰ For the most part, the Apache tribe supported the bill. In their resolution to Commissioner Collier, they wrote,

We feel that this section of the Bill is a good thing in that it provides a more liberal policy of administration of our own affairs, and that if passed, we can look forward to a greater voice in the administration of our own affairs, and can, as soon as we feel we are capable of gradual administration of our own affairs adopt in part, or in whole a plan of local

¹⁸⁶ Deloria, Jr. and Lytle, *American Indians, American Justice*, 14-16; Iverson, “*We Are Still Here*,” 89-90.

¹⁸⁷ Deloria, Jr. and Lytle, *American Indians, American Justice*, 14.

¹⁸⁸ Josephy, Jr., “Modern America and the Indian,” 202; Deloria, Jr. and Lytle, *American Indians, American Justice*, 14; Iverson, “*We Are Still Here*,” 86-89.

¹⁸⁹ Prucha, *The Great Father*, 963.

¹⁹⁰ White Mountain Apache Council to John Collier, resolution, undated ca. 1934, Felix S. Cohen Papers, Yale Collection of Western Americana, Beinecke Rare Book and Manuscript Library, Yale University, New Haven, CT.

self-government, which will place more of the responsibility of our local affairs on our own shoulders.¹⁹¹

The Apache tribe wholeheartedly agreed with the act's provision on education financial assistance. They also approved of the proposed Court of Indian Affairs. In Collier's original draft of the bill, which Congress drastically edited, he hoped to establish a Court of Indian Affairs separate from federal courts.

Collier's plans for an "Indian New Deal" did not stop there. He recognized that Native American communities were largely left out of New Deal assistance programs, and sought other measures to even the playing field.¹⁹² In April 1933, the first year he was in office, Collier managed to get Congressional approval for an Indian Civilian Conservation Corps to stimulate job creation for Native Americans on reservations.¹⁹³ Those who enlisted with the Indian Civilian Conservation Corps generally made construction and maintenance enhancements to their reservation.¹⁹⁴ Collier also succeeded in getting the Indian Arts and Crafts Act passed in 1935. This act was an offshoot of the Public Works of Art Project under the Civil Works Administration. The act employed Native American artists to create artwork for public places.¹⁹⁵

¹⁹¹Ibid.

¹⁹² Josephy, Jr., "Modern America and the Indian," 203.

¹⁹³ Donald Parman, "The Indians and the Civilian Conservation Corps," *Pacific Historical Review* 40, no. 1 (February 1971): 39-56, 40; Prucha, *The Great Father*, 945.

¹⁹⁴ Parman, "The Indians and the Civilian Conservation Corps," 41.

¹⁹⁵ Prucha, *The Great Father*, 973.

Arizonans and especially Native Americans felt the devastating socioeconomic effects of the Great Depression. Evidence suggests that non-native unemployed workers received preferential treatment for jobs over American Indians in Arizona—a fact Commissioner Collier was well aware of and worked to eliminate through his Indian New Deal programs. Forest M. Parker, Chairman of the Apache County Welfare Board wrote Governor Benjamin B. Moeur on July 10, 1933 regarding employment discrimination of Navajos in his county. Parker contended that the government overlooked Navajos as potential workers for State Highway Projects, because of their legal status as non-voting wards of the state—a status based on the 1928 ruling in the *Porter v. Hall* Arizona Supreme Court trial. Parker requesting Governor Moeur's assistance in the matter wrote,

These indians [sic] are citizens of the United States and recognized as such. Many are tax payers and all are subject to taxation if they have anything taxable...It does not seem just to me that these American Citizens should be denied the right to consideration on these projects just because the State Supreme Court has decided they are not entitled to a vote.¹⁹⁶

The wardship status of Navajos in Apache County directly contributed to their societal position as subaltern citizens. They could not vote for representatives or policy that affected them and furthermore they were denied good jobs in a tough economy. The ramifications of this allegation from Parker are alarming, because

¹⁹⁶ Forrest M. Parker to Benjamin B. Moeur, letter, July 10, 1933, RG 1, Office of the Governor, SG 11, Governor Benjamin B. Moeur, Arizona State Archives, Phoenix, AZ.

the second-rate citizenship status that American Indian citizens endured not only affected their right to vote in elections, but it affected opportunities for employment. It was economic discrimination at its worst, and the racial bias to hire unemployed white workers over American Indians during the Depression was according to Forrest M. Parker, directly connected to the special wardship status that the Arizona Supreme Court nurtured in the earlier *Porter v. Hall* trial. It is unclear whether Governor Moeur acted upon Parker's request for assistance in the matter.

Besides the Indian Reorganization Act and the Indian New Deal, John Collier worked on other issues of importance. He supported measures that promoted the freedom of native religions—a principle he was passionate about, and he believed in the cultural plurality of American Indian tribes.¹⁹⁷ The Indian Reorganization Act in many ways followed Collier's ideas about cultural pluralism.¹⁹⁸ Many of the programs he organized during his tenure sponsored a "cultural renewal" within tribes, like the 1935 Indian Arts and Crafts Act.¹⁹⁹ Furthermore, Collier decreased federally imposed restrictions on reservations with the encouragement of more self-government by tribal communities.²⁰⁰ This last

¹⁹⁷ Prucha, *The Great Father*, 951-953; Josephy, Jr., "Modern America and the Indian," 202; Iverson, "We Are Still Here," 80-86.

¹⁹⁸ Josephy, Jr., "Modern America and the Indian," 201; Iverson, "We Are Still Here," 79.

¹⁹⁹ Deloria, Jr. and Lytle, *American Indians, American Justice*, 14; Iverson, "We Are Still Here," 80-86.

²⁰⁰ Prucha, *The Great Father*, 953-954.

action under Collier truly demonstrates his willingness to let go some of the responsibilities and control the United States government had over tribal communities, and his push towards native self-government. Collier whether he intended to or not, eased the guardianship relationship between reservation American Indians and the federal government. The Indian Reorganization Act and the Indian New Deal, thus, provided an emphasis on Native American competency. Yet, the implementation of tribal self-governments was still an Americanized process and an assertion of power over native people.

John Collier's Indian Reorganization Act drew support from unlikely sources. In 1929, the *Good Housekeeping* magazine published a series of three articles on the plight of Native Americans across the nation. Most of the articles discuss serious issues such as health, education, and poverty, and especially of American Indian children, which tugged at the heartstrings of thousands of the magazine's primarily women readers. Emotionally titled articles like "*The Cry of a Broken People: A Story of Injustice and Cruelty That is as Terrible as it is True*," and "*We Still Get Robbed*," the third article "*The End of the Road*" focuses on the findings of the 1928 Meriam Report.²⁰¹ The last article urges its readers to research more on the topic and read the Meriam Report, Senate hearings, and other suggested materials that would educate them on the conditions of Native

²⁰¹ Vera L. Connelly, "The Cry of a Broken People: A Story of Injustice and Cruelty That is as Terrible as it is True," *Good Housekeeping Magazine* 88, no. 2 (February 1929): 30-31, 226-237; Vera L. Connelly, "We Still Get Robbed," *Good Housekeeping Magazine* 88, no. 3 (March 1929): 34-35, 249-259; Vera L. Connelly, "The End of the Road," *Good Housekeeping Magazine* 88, no. 5 (May 1929): 44-45, 153-170.

Americans and the “Indian Problem.” This last article also included an interview with John Collier, then the Secretary of the American Indian Defense Association, and highly praised his efforts for the American Indian cause. The article concluded by encouraging its readers to write to their Senators, Representatives, and President Hoover to improve the lives of American Indians. The article promoted the organization of “Indian Welfare” groups headed and led by women. Lastly, the article sermonized,

Ranged opposite you in the fight you will find all the most formidable forces of organized corruption...This power may at first appear invulnerable. But it has its fear-spot. It fears today, more than any other one thing, the righteous wrath of American womanhood—of home women, consecrated women, aroused to deep indignation and banded together in a crusade to obtain justice for the oppressed.²⁰²

Women all over the United States read the article, and responded to it. By 1934, Vera Connolly, author of the first three articles wrote her last and final article in support of the Indian Reorganization Act. The 1934 article, “*The End of a Long, Long Trail*,” pleaded for women again to write to their senators and representatives to pass the Wheeler-Howard bill.²⁰³ Connolly reminded her readers the impact they had on American Indian affairs in the last five years:

You listened. Your hearts were wrung. You—white women—arose in a body. You demanded an overturning of the Bureau of Indian Affairs in Washington. You demanded a new day for the Indian people. By the thousands, you wrote to your representatives in Congress and demanded that they act. This great tidal wave of righteous anger—woman anger—

²⁰² Vera L. Connelly, “The End of the Road,” 170.

²⁰³ Vera L. Connelly, “The End of a Long, Long Trail,” *Good Housekeeping Magazine* 98, no. 4 (April 1934): 50-51, 249-260.

performed a miracle. It gave the needed onward rush to the slowly mounting sea of public dissatisfaction with the conduct of Indian affairs...this great tidal wave of woman indignation helped sweep the movement for reform of Indian affairs to victory.²⁰⁴

Connolly's series of four articles over five years written for a base of predominately-white women readers suggests the power women had in influencing the progression of American Indian affairs. Certainly, women did have authority by writing to their Congressmen and convincing their husbands, fathers, brothers, and male friends to react to the plight of the American Indians. The articles demonstrate an attitudinal change of white American thinking towards Native Americans. American Indians became a group of people that needed the help and support of white people. The slant of the articles to include statistics and stories of American Indian children, no doubt caused women reading the articles to respond in a humanitarian way. Public awareness of the "Indian Problem," through the printing of these articles in the *Good Housekeeping* magazine had the potential to reach millions of households across the United States, and these articles contributed to the passage of the Indian Reorganization Act.

Having drafted much of the Indian Reorganization Act himself, Felix S. Cohen saw the bill as a way to uplift Native American people from economic, social, and political despair. In a speech he prepared for Congress, Cohen proclaimed,

²⁰⁴ Ibid., 51.

The pending bill would give the Indians a start in the direction of self-discipline and self-respect. It would enable the Indians of a reservation to organize on a permanent basis, to train themselves in the tasks of local self-government, to consult with the Indian Office in all matters affecting their own welfare, and to exercise a final veto against any improper disposition of their own funds. These are the first steps of political advancement.²⁰⁵

Like Collier, Cohen believed that the major tenets of the Indian Reorganization Act would empower tribal communities to exercise their sovereign rights. The passage of the act demonstrated a restructuring of a political power paradigm, in which the United States government bequeathed to individual tribes more control over their assets and their affairs. The empowerment that the federal government theoretically bestowed to those willing tribes was limited in that tribal communities were essentially forced to model their new tribal governments after American standards. In other words, the United States government gave tribes more sovereign power, but then turned around and told them how to operate it. Compelling the reproduction of the American democratic form into tribal governments was another form of assimilation and another attack on the communalism of tribalism. In effect, it was limited federal control over American Indian communities clothed in the promise of increased independence. The intent to further assimilate American Indian communities was transparent. In the same speech quoted above, Cohen added,

Nothing in all this program can have the effect of segregating the Indians or preventing their assimilation of the best traditions and achievements of

²⁰⁵ Felix S. Cohen, "Will this bill segregate the Indians and send them back to the blanket?"

our own society. Rather, this bill seeks to give the Indian for the first time a real chance to secure the greatest achievements of the white society around him, training in the skilled tasks of that society, a higher standard of living, and a voice in his own government.²⁰⁶

There were other reasons for decentralizing the Bureau of Indian Affairs and empowering tribal communities through the Indian Reorganization Act. A 1934 article from the journal *Current History* reveals an economic element for enforcing the Indian Reorganization Act: “From our white point of view, it means taking a large number of dependent people and making them self-supporting, with an increased area of land devoted largely to non-competitive subsistence farming... Incidentally, it means an immediate saving to taxpayers of a million or more dollars per annum in needless paternalistic outlay.”²⁰⁷ The federal government was well aware of the costliness of overseeing the welfare of thousands of people under its guardianship, especially during the difficulty of a depression.

Besides his important role in helping to draft the Wheeler-Howard bill, perhaps Felix S. Cohen’s greatest contribution to American Indian affairs is his 1939 publication of *The Handbook of Federal Indian Law*, of which government officials at all levels used as a reference for American Indian policy-making. Born in 1907, Cohen received his master’s degree in philosophy in 1927 and then his PhD in 1929 both from Harvard. In 1931, Cohen graduated with an LLB

²⁰⁶ Ibid.

²⁰⁷ Oliver La Farge, "The American Indian's Revenge," *Current History* 40, no. 2 (May 1934): 163-168, 168.

from Columbia Law School. Between 1933 and 1947, Cohen advanced from assistant solicitor in the Solicitor's Office to chairman of the Department of the Interior's Board of Appeals. During his tenure in the Department of the Interior, Cohen helped draft the bill for the 1934 Indian Reorganization Act. In 1939, while editing *The Handbook of Federal Indian Law*, Cohen was consequently appointed the Chief of the Indian Law Survey. When he retired from the Department of the Interior in 1948 to practice law, Cohen was honored with the Distinguished Service Award—the Department's highest tribute. During his time again as a lawyer, Cohen became the General Counsel of the Association on American Indian Affairs. As General Counsel, he became involved in the Arizona Supreme Court case *Harrison v. Laveen*, of which he co-wrote a *brief of amicus curiae*. Cohen also gave his support to the 1948 New Mexico Supreme Court American Indian voting rights case, *Trujillo v. Garvey*, when he presented an oral argument on behalf of the plaintiffs in that case. His contributions to both cases, helped achieve a successful outcome of the enfranchisement of Native Americans in those two states.²⁰⁸

Felix Cohen understood that white Americans generally classified Native Americans as second-class citizens, primarily because of the tribalism of Native communities was counter to European western mainstream thinking, and,

²⁰⁸ Cohen, *Felix S. Cohen's Handbook of Federal Indian Law*, viii-xi; Susie R. Bock, Lucy M. Kramer and George Miles, "Guide to the Felix S. Cohen Papers" (New Haven, CT: Yale University Library, 2010), <http://hdl.handle.net/10079/fa/beinecke.cohen>, (accessed October 22, 2011).

secondly, the degrading status of their wardship with the federal government contributed to their categorization as second-rate citizens. Cohen held passionate views about empowering American Indians and uplifting them to obtaining full equal citizenship status. He spent many years of his life involved in American Indian civil rights issues. In his article titled, “Indians are Citizens,” Cohen discusses the problems of suppressing the rights of the American Indian:

If Indians are, by and large, as I think, an underprivileged minority group, a group against which many illegal or extralegal forms of oppression and discrimination are practiced, then the problem of protecting the legal rights of Indians is not purely an individual problem. Rather, it is a problem which affects Indians as a group and therefore profoundly affects the rest of society, for while racial oppression has seldom destroyed the people that was oppressed, it has always in the end destroyed the oppressor. The rights of each of us in democracy can be no stronger than the rights of weakest minority.²⁰⁹

Cohen essentially described the Native American as a subaltern citizen—a second-class citizen who has restricted rights and little voice to speak out against the discriminations that beset him/her. Native Americans through treaties, laws, and legislation have indeed had a “peculiar” dual citizenship status with the United States since the end of the nineteenth century, but that, Cohen states, should not affect their legal rights as citizens of the United States. As a student of philosophy and law, Cohen grasped the connection between racial oppression and the failings of democracy.

²⁰⁹ Felix S. Cohen, *Indians are Citizens* (Washington, D.C.: Department of the Interior, United States Indian Service, 1948), 7.

A bright lining to the history of World War II was its impact on the home front with respect to minority and women's rights. After the 1941 attack on Pearl Harbor forced the involvement of the United States in World War II, millions of Americans including members of all minority groups and women willingly mobilized for war. The war provided a positive attitudinal change towards minorities and women, because everyone's contribution to the war effort was desperately needed and appreciated. The image of the iconic "Rosie the Riveter" demonstrates the further move of women from the private sphere to the public sphere.²¹⁰ With the onslaught of World War II, many Native Americans felt it was their "duty" to contribute to the war effort.²¹¹ Approximately 25,000 men and 700 women from numerous Native American tribes across the country either joined or were drafted into military service during the war.²¹² Of their ethnicity, Native Americans have the highest ratio to the total United States population for serving in the Armed Forces, and they have served in every American war.²¹³ Native Americans were exempted from the draft during World War I, because of their general non-citizenship status, but after their status changed with the passage

²¹⁰ Donald L. Fixico, *Termination and Relocation: Federal Indian Policy, 1945-1960* (Albuquerque: University of New Mexico Press, 1986), 6.

²¹¹ *Ibid.*, 5.

²¹² Donald L. Fixico, *American Indians in a Modern World* (Lanham, MD: AltaMira Press, 2008), 82; Fixico, *Termination and Relocation*, 4.

²¹³ Fixico, *American Indians in a Modern World*, 82.

of the 1924 Indian Citizenship Act and the 1940 Nationality Act, most were drafted in World War II, despite high numbers of volunteers.²¹⁴

Admiration for Native American veterans swept across the country, especially with the publicity of Ira Hayes, the Pima Indian who helped raise the flag on Mount Surabachi in Iwo Jima.²¹⁵ The Navajo code talkers project may have been a secret military operation during the war, but it was no secret to Arizonans that there were high numbers of volunteering Navajos entering the armed services. An estimated 450 Navajos were trained as code-talkers during World War II.²¹⁶ The popularity of the Navajo code talkers, especially within the United States military, also contributed to an increase of respect towards American Indian communities.²¹⁷ For white Americans, the figures of Ira Hayes and the Navajo Code talkers challenged preconceived notions of Native Americans.²¹⁸ In Arizona, the home of both Ira Hayes and most of the Navajo code talkers, appreciation for American Indians veterans increased exponentially. Governor of Arizona during World War II, Sidney P. Osborn, expressed his high

²¹⁴ Jere' Bishop Franco, *Crossing the Pond: The Native American Effort in World War II* (Denton, TX: University of North Texas Press, 1999), 41-79, 191-192; *The History of Indian Voting in Arizona*, DVD.

²¹⁵ Fixico, *Termination and Relocation*, 3; Kenneth William Townsend, *World War II and the American Indian* (Albuquerque: University of New Mexico Press, 2000) 148-150.

²¹⁶ Townsend, *World War II and the American Indian*, 148.

²¹⁷ Fixico, *Termination and Relocation*, 7-8; Townsend, *World War II and the American Indian*, 145-150.

²¹⁸ *Ibid.*, 3, 7-8.

regards for Native American soldiers on more than one occasion. He wrote in 1946, “We are proud of the splendid showing made by the Indians of Arizona, both men and women, on all the far flung fields of the war. They stood shoulder to shoulder with Americans of other races and did not flinch when the crucial tests of battle came.”²¹⁹ Governor Osborn felt that further assimilation of Native Americans into American society was warranted based on their service to the war effort. In fact, Governor Osborn seemed to infuse the heroism of Native American soldiers with Americanism: “Every once in a while, I receive a report in my office showing that our young Indian men are making splendid soldiers. They have the right sort of American spirit.”²²⁰ The “American spirit” Governor Osborn refers to is a level of assimilation, the Native American veteran had achieved. Indeed, many American Indian veterans after returning from war did leave their reservations for a more non-native life experience. Many found the modernization of the non-reservation world more appealing. In a sense, World War II contributed to the further assimilation of a large number of Native Americans, a goal Governor Osborn expressed:

Our Indian soldiers of Arizona have made a fine record in this war, of which the state is quite proud. I am a strong believer in the policy that the Indians of Arizona, which comprise such a large proportion of our population, should be given every opportunity and encouragement to amalgamate themselves with the rest of the population. Such an

²¹⁹Sidney P. Osborn to William McKinley, letter, April 11, 1946, RG 1, Office of the Governor, SG 14, Governor Sidney P. Osborn, Arizona State Archives, Phoenix, AZ.

²²⁰ Sidney P. Osborn to Fred W. Dralle, letter, November 17, 1942, RG 1, Office of the Governor, SG 14, Governor Sidney P. Osborn, Arizona State Archives, Phoenix, AZ.

amalgamation, in my opinion, would be of great benefit both to the Indians and to the rest of our population.²²¹

Part of the amalgamation of Native Americans was having a voice in the American democratic society. World War II directly contributed to an increase in awareness of the injustice of disenfranchising Native American veterans in Arizona. Therefore, it was necessary for Native American civil rights activists to utilize the popularity of the American Indian veteran towards achieving voting rights for all American Indians in Arizona.

Despite the clear ruling of 1928 *Porter v. Hall* barring Native Americans residing on reservations the right to vote, the voting status of non-reservation American Indians was nebulous at times for the next two decades. This issue became a notable problem when it was discovered that a significant number of discharged Native American veterans had left their reservations since the war. According to an article printed in 1945 by University of Arizona Political Science Professor N.D. Houghton, even American Indians who had left their reservation were ineligible for the electorate. Houghton discovered that the Attorney General's Office made this judgment in 1944. Quoting Attorney General Jon Conway on November 6, 1944, "We [the Attorney General's Office] do not think an Indian loses his status as a ward of the government when he moves off the Reservation and goes on his own."²²² Houghton further reported that only six of

²²¹ Sidney P. Osborn to W. J. Cummings, letter, September 13, 1945, RG 1, Office of the Governor, SG 14, Governor Sydney P. Osborn, Arizona State Archives, Phoenix, AZ.

²²² Houghton, "Wards of the United States," 19.

the fourteen counties at the time allowed non-reservation American Indians the franchise.²²³ Less than two years later, on March 27, 1946, Secretary of State Daniel E. Garvey requested an opinion from Attorney General John L. Sullivan on the voting status of American Indians in Arizona. Attorney General Sullivan reiterated the 1928 *Porter v. Hall* decision, but also stated that any American Indian determined to be “emancipated” from guardianship could vote, based on an individual assessment.²²⁴ Evidently, the Arizona government was not consistent with regard to the voting status of those Native Americans who had left the tribalism of the reservation, and abandoned their wardship with the United States. In just two years and from two different Attorney Generals, the edict on the matter was quite different.

In response to governmental actions like the Indian New Deal, approximately eighty Native American intellectuals and government officials founded the National Congress of American Indians in Denver, Colorado, in November 1944.²²⁵ The group was composed of representatives from fifty tribes. The association’s objectives emphasized American Indian civil rights issues and full citizenship. Native American voting rights was specific key issue the

²²³ Ibid.

²²⁴ John L. Sullivan to Daniel E. Garvey, letter, April 8, 1946, RG 1, Office of the Governor, SG 14, Governor Sidney P. Osborn, Arizona State Archives, Phoenix, AZ.

²²⁵ Christopher K Riggs, "Dual Citizenship and the Struggle for American Indian Voting Rights in the Southwest in the 1940s" (paper presented at the *Western Social Science Association Meeting*, Phoenix, AZ, April 19-22, 2006) 7-8.

organization endorsed.²²⁶ By 1947 and 1948, the postwar period provided an opportunity for the National Congress of American Indians to take action in Arizona and New Mexico in support of Native American suffrage.²²⁷ The increased integration of Native Americans into the larger American society during World War II, and their involvement in the war effort provided an opportunity for the National Congress of American Indians to test the current voting laws in Arizona and New Mexico, the last two states to deny American Indians the franchise.

The National Congress of American Indians was involved in two Arizona court cases challenging the state's current election laws that disenfranchised Native Americans. Harrison and Austin's lawsuit was not the only civil action filed against county recorders in Arizona by Native Americans for the pursuit of enfranchisement, but it was the only one to go through state courts. In a second strategy, the National Congress of American Indians arranged for a civil action against Arizona officials in the federal United States District Court.²²⁸ On March 4, 1948, a Mohave and three Apache Indians filed a joint civil suit against the county recorders of the Navajo and Gila counties for violating the Fourteenth and Fifteenth Amendments of the United States Constitution by disallowing the plaintiffs' registration on the counties' general register, because the plaintiffs

²²⁶ Ibid., 8.

²²⁷ Ibid., 10-11.

²²⁸ Ibid., 11.

were Native American. Louis Kichiyan and Marvin Mull from the San Carlos Reservation with Lester Oliver and Robert J. Suttle of the Fort Apache Reservation sued their respective County Recorders, Joseph Kinsman of Gila County and Elda Probst of Navajo County. Felix S. Cohen and James E. Curry of the National Congress of American Indians headed a team of four local lawyers to represent the plaintiffs. The complaint's main allegation was a challenge to the 1928 interpretation of the Arizona State Constitution that disqualified reservation American Indians from the electorate based on their legal status as wards of the federal government. Attorney Guy Axline, attorney for the plaintiffs stated to the *Arizona Daily Sun*, "This action will give the Federal courts a chance to rule on the rights of Indians to vote."²²⁹ In the end, the federal courts would not decide the fate of disenfranchised Native Americans in Arizona. The case apparently never resulted in any further judicial ruling, because the *Harrison v. Laveen* trial was already on the docket for the Arizona Supreme Court. The addition of this identical civil suit in Arizona at the same time of the *Harrison v. Laveen* trial represents a concerted effort by the National Congress of American Indians and willing Native Americans to force change in the state.²³⁰

In the end, only the *Harrison v. Laveen* trial caused a dramatic shift in judicial precedent in favor of Native American enfranchisement. Both the

²²⁹ "Indian Ballot Suit Filed: Navajo, Gila Recorders to be Defendants, Apaches Serve Complaint Today," *The Arizona Daily Star*, March 17, 1948.

²³⁰ Riggs, "Dual Citizenship," 11.

plaintiff and the defense teams for the Supreme Court case presented strong evidence, but in the end, the plaintiff's arguments swayed the Arizona Supreme Court Justice's opinions. Just as in the *Porter v. Hall* trial twenty years earlier, the issue of federal guardianship over American Indians was at the forefront of the case. The political ramifications the case's decision could have on American Indian civil rights drew attention from a number of interested parties.

Understanding the racial undertones of the trial and its implications for full

American Indian citizenship, Representative Harless wrote:

I personally will not relent in my efforts to establish full citizenship and personal rights for the Indians while I am in public office. I see no justification for denying suffrage to any qualified voter. I see less justification for doing so because of the individuals racial background. Unfortunately, our attitude and treatment of the Indians has been allowed to become out-dated, and the Governments of the United States and of the various States must begin to face the facts now and to correct a situation which has grown out of indifference toward the progress and development of our Indian citizenship.²³¹

With the written support of the Department of the Interior, the Department of Justice filed a *brief of amicus curiae* on behalf of the appellants.²³² In addition, the National Congress of American Indians and the American Civil Liberties

²³¹ Richard F. Harless to Laird J. Dunbar, letter, April 6, 1948, Richard F. Harless Papers 1932-1984, MSS-166, Arizona State University Libraries Arizona Collection, Arizona State University Libraries, Tempe, AZ.

²³² Authors of the Department of Justice *brief of amicus curiae* were T. Vincent Quinn, the Assistant Attorney General, Frank E. Flynn, the U.S. Attorney for District of Arizona, and Charles B. McAlister, the Assistant U.S. Attorney for District of Arizona.

Union also filed a joint *brief of amicus curiae* in support of Harrison and Austin's cause.²³³

The plaintiff's detailed and intelligent effort in finding holes in Justice Lockwood's opinion from 1928 truly won them the case. In addition, the *briefs of amicus curiae* from the Department of Justice, the National Congress of American Indians, and the American Civil Liberties Union strengthened their argument. County Attorney Francis J. Donofrio and Deputy County Attorney Warren L. McCarthy of the defense team, arguably presented a thorough legal defense for continued Native American disenfranchisement in Arizona, but their reasoning was largely outdated and mostly taken from the original *Porter v. Hall* trial.

The plaintiffs first presented the basic facts of the case. The appellants, Harrison and Austin, members of the Mohave-Apache Indian Tribe alleged that they met all the qualifications to vote. They were United States citizens, long-time residents of Maricopa County and the Scottsdale precinct, were at least 21 years of age, could read the State Constitution without memorization, were not idiots, insane or *non compos mentis*, and never convicted of a felony. Furthermore, they lived on the Fort McDowell Indian Reservation, which was entirely within Maricopa County and Scottsdale precinct. They also owned off-reservation property, on which they paid taxes. Lastly, they could move on and off the reservation at will and were subject to state and federal civil, and criminal

²³³ Authors of the NCAI and ACLU *brief of amicus curiae* were James E. Curry, Frances Lopinsky, Charles MacPhee Wright, and Felix S. Cohen.

laws. The single definitive point of disqualification they acceded was their alleged status as federal wards, which the appellants wholeheartedly denounced.²³⁴

A number of influences directly and indirectly affected the outcome of the *Harrison v. Laveen* trial. On December 5, 1946, President Harry S Truman issued Executive Order 9808 establishing a committee on civil rights. After a review of governmental policies and law, and listening to governmental agencies through special hearings, the Committee on Civil Rights produced a comprehensive report containing proposed measures to mitigate acknowledged inadequacies of civil rights issues for all United States citizens.²³⁵ The Committee presented the report to President Truman in December 1947, just days after Frank Harrison and Harry Austin tried to register to vote in Maricopa County, and months before the Arizona Supreme Court justices would review their appeal. The fifth proposal of the Committee's recommendations in Section III "to strengthen the right to citizenship and its privileges" was "the granting of suffrage by the States of New Mexico and Arizona to their Indian citizens."²³⁶ The Committee urged for a

²³⁴ Richard F. Harless, Lemuel P. Mathews, and Ben B. Mathews, *Opening Brief of Appellants, Harrison v. Laveen*, 67 Ariz. 337; 196 P.2d 456, April 1948, Richard F. Harless Papers 1932-1984, MSS-166, Arizona State University Libraries Arizona Collection, Arizona State University Libraries, Tempe, AZ, 4.

²³⁵ Harry S. Truman Library and Museum, "Records of the President's Committee on Civil Rights Record Group 220," Harry S. Truman Library and Museum, <http://www.trumanlibrary.org/hstpape/pccr.htm>, (accessed October 16, 2011).

²³⁶ The President's Committee on Civil Rights, *To Secure These Rights: The Report of the President's Committee on Civil Rights*, Harry S. Truman Library and Museum,

“reinterpretation” of the current State Constitution because the exclusionary phrase “persons under guardianship” the Committee affirmed, “might hold that this clause no longer applies to Indians.”²³⁷ The Committee also acknowledged that the return of disenfranchised American Indian veterans from the war had sparked protests for change.²³⁸ The Arizona Supreme Court read the report and used it in crafting their final decision in the case. The report’s influence on the case was widely known. The *Arizona Daily Citizen* reported that the report “played no small part in upsetting the old Arizona ruling.”²³⁹ In his opinion, Justice Udall noted it “brands the decision in the Porter case as being discriminatory and recommends that suffrage be granted by the states of Arizona and New Mexico to their Indian citizens.”²⁴⁰ Undeniably, even the federal Executive Branch influenced the Arizona Supreme Court in this case.

The 1931 article “The legal status of Indian suffrage in the United States” written by University of Arizona political science professor, N. D. Houghton, also had some bearing on the Arizona Supreme Court’s decision in the trial. Houghton maintained that the 1928 *Porter v. Hall* decision was largely based on whether it

<http://www.trumanlibrary.org/civilrights/srights4.htm#160>, (accessed October 16, 2011), 160, 161.

²³⁷ Ibid., 161.

²³⁸ Ibid., 40.

²³⁹ Dick Smith, “State Supreme Court Rules Indians May Vote, If Able To Read,” *Tucson Daily Citizen*, July 16, 1948.

²⁴⁰ *Harrison et al. v. Laveen*, 5065, 4.

was “good public policy” to grant voting rights to Native Americans living on reservations—a point originally made by Justice Ross in 1928.²⁴¹ The 1948 court agreed with Justice Ross, that “good public policy” was irrelevant in a judicial court and should be left up to the determination of the legislative or executive branches, and that the only role of the judiciary branch was to interpret the State Constitution in this respect.²⁴² “We concede,” Justice Udall wrote, “that very persuasive arguments may be advanced upon both sides of the “public policy” question, but we refuse to be drawn into the controversy as to the wisdom of granting suffrage to the Indians, our sole concern being whether the constitution, fairly interpreted, denies them the franchise.”²⁴³

The status of appellant Frank Harrison as a World War II veteran contributed to the outcome of the 1948 *Harrison v. Laveen* trial. During the war, the U.S. military drafted Harrison through the Selective Training and Service Act of 1940. Once the war ended, the U.S. military honorably discharged Harrison. To elucidate the meaning of the 1924 Indian Citizenship Act, which did not specifically describe the citizenship status of American Indians born after the date of the act, Congress passed the October 14, 1940 Nationality Act in order to clarify that “a person born in the United States to a member of an Indian tribe”

²⁴¹ N. D. Houghton, “The Legal Status of Indian Suffrage in the United States,” *California Law Review* 19, no. 5 (July 1931): 518; Porter *et al. v. Hall* 2793, 11.

²⁴² Porter *et al. v. Hall* 2793, 11; Houghton, “The Legal Status,” 518; *Harrison et al. v. Laveen*, 5065, 5.

²⁴³ *Harrison et al. v. Laveen*, 5065, 5.

was an American citizen.²⁴⁴ In the opening brief of the Appellants, the plaintiff's team wrote, "We believe that Congress in 1940 (and perhaps prior to that date) effectively removed all restrictions from Indians by the enactment of the Nationality Code and endowed Indians living on a reservation with all the privileges of citizens, including the right to vote."²⁴⁵ The 1940 Nationality Act and Selective Training and Service Act, the prosecution argued cleared up issues of Indian citizenship so that American Indians could be added to the draft. The plaintiff's team claimed that Congress carefully worded the Nationality Act and the Selective Training and Service Act with the intention of further defining the citizenship status of reservation American Indians, and also for the objective of "terminat[ing] all relationship with reservation Indians, which might hinder their right to vote."²⁴⁶ By cautiously defining reservation American Indian citizenship, Congress therefore, enabled all reservation Native Americans liable to military duty through the Selective Training and Service Act.²⁴⁷ The passage of these two acts in 1940, as a result, facilitated military service for thousands of American Indians like Harrison residing on reservations. The plaintiff's team wrote in their opening brief, "It is well known that many reservation Indians served their

²⁴⁴ *Nationality Act of 1940*, 76 P.L. 853; 76 Cong. Ch. 876; 54 Stat. 1137, (October 14, 1940) § 201b.

²⁴⁵ Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 7.

²⁴⁶ *Ibid.*, 28.

²⁴⁷ *Ibid.*, 28-29.

country faithfully in the late war. We need go no further than to mention the reservation Indian at Iwo Jima (Mt. Suribachi). What manner of ‘guardianship’ prevents a man from voting and yet requires him to do military service.”²⁴⁸

In response to the assertion that Harrison was a disenfranchised, honorable soldier, the defense replied, that other active duty soldiers in World War II were also not permitted to vote due to their underage status, and thus were, by law, non-*sui juris*.²⁴⁹ Unsurprisingly, this issue of underage citizens risking their lives as drafted soldiers would come up again decades later during the Vietnam War. In response, Congress added the Twenty-Sixth Amendment to the United States Constitution, changing the age requirement from twenty-one to eighteen in order to correct this injustice.

The defense team again tackled the issue of disenfranchised American Indian veterans by adding, “Further, none of the veterans of the last war were compelled to return to the reservation and take up their tribal ways. If they did so, they did so knowing what the effect would be.”²⁵⁰ This last statement of the defense team demonstrates a lingering subjugation of tribalism. The “tribal ways” of returned American Indian veterans to reservations was a threat to Americanism. Those veterans that returned to the tribalism of the reservation

²⁴⁸ Ibid., 29.

²⁴⁹ Francis Donofrio and Warren L. McCarthy, *Appellee’s Reply Brief, Harrison v. Laveen*, 67 Ariz. 337; 196 P.2d 456, May 22, 1948, Richard F. Harless Papers 1932-1984, MSS-166, Arizona State University Libraries Arizona Collection, Arizona State University Libraries, Tempe, AZ, 52.

²⁵⁰ Ibid.

after their integration into the American military demonstrated a conscious choice, claimed the defense, to disengage themselves from American society. Therefore, their return to the reservation halted any further attempt to assimilate them into American society. The defense essentially contended that any returning American Indian veterans had the choice to leave the tribalism of the reservation behind and become full voting citizens or return to the reservation and remain subject to a continued wardship status that disenfranchised them.

The Supreme Court Justices did not agree with the counterarguments of the defense about American Indian veterans. Instead, they agreed with the plaintiff's argument that the intent of the 1940 Nationality Act was to define clearly Native American citizenship so that the United States government could draft young American Indian men for war through the Selective Training and Service Act. Justice Udall wrote in his opinion, "we know that from our own State thousands of these native Americans served in the armed forces with pride and distinction, e. g., Ira Hamilton Hayes, a Pima Indian, participated in the epochal raising of the stars and stripes on Mt. Surabachi on Iwo Jima."²⁵¹ Despite the Court's clear recognition of the service of Native American veterans in their state, the voting status of American Indian veterans was not the persuading contention that determined the outcome of the case. In order for the Justices to overrule a previous decision from their own court, they had to confront the one

²⁵¹ *Harrison et al. v. Laveen*, 5065, 5.

assertion that convinced that earlier court to make their ruling, which was that American Indians were “under guardianship” to the federal government, and therefore ineligible to vote according to the Arizona State Constitution.

The dispute over the guardianship issue was complex. As the 1928 court did, the Justices first had to address the usage of the term in judicial precedent. Once again, the Court revisited the term’s origin in the *Cherokee v. Georgia* trial. The Court agreed with Chief Justice Ross’s judgment of the “loosely” interpreted term “under guardianship” since Chief Justice Marshall expressed it back in 1831. Referencing *Felix S. Cohen’s Federal Handbook of Indian Law*, the Court used the following citation in their opinion,

Primarily in its original and most precise signification the term ‘ward’ in the federal decisions and statutes has been applied (a) to tribes rather than to individuals, (b) as a suggestive analogy rather than as an exact description, (c) to distinguish an Indian tribe from a foreign state, and (d) as a synonym for ‘beneficiary of a trust’ or ‘cestui que trust’. The failure to distinguish among these different senses in which the term ‘ward’ has been so loosely used is responsible for a considerable amount of the existing confusion.²⁵²

Just as Justice Ross contended in 1928, and as Felix Cohen wrote in his Handbook, the 1948 court agreed that Justice Marshall was making an analogy when he stated that that the relationship between the federal government and Native Americans “resembled a guardianship.” Furthermore, the 1948 Justices concurred with Justice Ross’s opinion that the framers of the Arizona State Constitution never had American Indians in mind when writing the clause “under

²⁵² *Felix S. Cohen’s Federal Handbook of Indian Law* quoted in *Harrison et al. v. Laveen*, 5065, 6.

guardianship” as a disqualification for the electorate.²⁵³ Furthermore, only the State of Arizona made the connection between Native Americans and guardianship through interpretation of their state election laws. North Dakota’s constitution had an identical disqualification for their electorate, and just as in Arizona, the State Supreme Court contested the interpretation of the statute in the 1920 trial *Swift v. Leach*. In that case, the court did not find that the “guardianship” clause in their Constitution applied to Native Americans, and subsequently allowed their American Indian citizens the right to vote. The 1948 Supreme Court agreed with Justice Ross that the *Swift v. Leach* decision was “good law.”²⁵⁴

Another piece of the guardianship puzzle was the interpretation of individuals as *sui juris* or non-*sui juris*. In the *Porter v. Hall* trial, the majority found that the plaintiffs were not *sui juris* and thus “under guardianship” which prevented them from qualifying to vote. After defining the meaning of *sui juris* from the third edition of Black's Law Dictionary, the 1948 court decided that according to their definition, the plaintiffs were *sui juris* for the simple reason that the plaintiffs could not have brought a complaint to court in their name if they

²⁵³ Ibid.

²⁵⁴ *Swift v. Leach*, 45 N.D. 437, 178 N.W. 437; *Harrison et al. v. Laveen*, 5065, 6; McCool, *Native Vote*, 15.

were under guardianship.²⁵⁵ The prosecution made this point in their opening brief,

If Porter (Indian) was not *sui juris*, then what business had he in bringing the case in his own name in the first place? The generally accepted definition of ‘non *sui juris*’ is that condition which, among other things, prevents a person from maintaining an action at law in his own name...No motion was made to bring in the ‘real party of interest’ namely a ‘guardian.’²⁵⁶

The “real party of interest” or the supposed “guardian” of the Porter and Johnson in the 1928 case would have to have been the United States according to the ruling. Justice Udall pointed out that the Department of Justice submitted a *brief amicus curiae* on behalf of the plaintiff, and wrote that the federal government agency did so “to disclaim any intention to treat the plaintiffs as ‘persons under guardianship’. Certainly the state courts cannot make the United States a guardian against its will.”²⁵⁷

The 1948 Supreme Court Justices were well aware of the effects a changing society had on this case. Since the economic crisis of the 1930s and World War II, a handful of more liberal judicial rulings and legal modifications in Arizona had resulted in advancing the position of American Indians in the state. With the exception of voting rights, Native Americans on and off the reservation were slowly becoming more incorporated into the white-dominated society.

²⁵⁵ *Harrison et al. v. Laveen*, 5065, 6.

²⁵⁶ Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 14.

²⁵⁷ *Harrison et al. v. Laveen*, 5065, 7.

Moreover, the state, and not the federal government instituted the gradual adoption of American Indian civil rights in Arizona. As Justice Udall pointed out in his opinion, the 1939 Arizona State Legislature authorized and encouraged reservation superintendents to officiate marriages and issue marriage licenses to Native Americans. He further added that reservation Native Americans were also filing for divorce through the Superior Court, and their estates processed by probate courts.²⁵⁸ Justice Udall concluded,

Avowedly the government's policy aims at the full integration of Indians into the political, social, and economic culture of the nation, and during the twenty years that have elapsed since the decision in the Porter case some significant changes have taken place in the legal position of the Indian which have a bearing upon the applicability of that decision to contemporary conditions.²⁵⁹

To demonstrate the change of the legal status of Native Americans in Arizona, Justice Udall used a number of Arizona court cases that the plaintiff's team presented in their opening brief, which resulted in judicial decisions in favor of American Indian civil rights.

The first case both the plaintiff's team and Justice Udall offered as judicial evidence was the same case the 1928 plaintiff's team submitted; the 1928 *Denison v. State* trial of which Justice Lockwood reasoned a full-blooded Hopi Indian qualified as a juror, and had the legal status of *sui juris*. Quoting the case's decision, the prosecution wrote in their opening brief, that the juror in question

²⁵⁸ *Harrison et al. v. Laveen*, 5065, 5.

²⁵⁹ *Ibid.*

was determined to have, “a sound mind and good moral character,” the necessary qualifications for a juror according to state law.²⁶⁰ The prosecution further pointed out the inconsistency of Justice Lockwood’s rulings with respect to American Indian civil rights issues. It was Justice Lockwood, they argued, who gave the ruling in the *Denison v. State* case, but in the *Porter v. Hall* trial just months later, he would determine Native Americans on reservations were non-*sui juris*.²⁶¹

A 1935 state law prevented a Navajo from obtaining a hunting and fishing license because the law blatantly barred American Indians. The Navajo, Cecil Begay, sued the State Game Warden, and the case went to the Arizona Supreme Court. Justice Lockwood wrote the opinion for the case, *Begay v. Sawtelle*, and it was Justice Lockwood who determined that the current law, which stated, “no license shall be sold to any such Indian,” was unconstitutional and violated the Fourteenth Amendment of the United States Constitution.²⁶² In their opening brief, the prosecution team for Harrison and Austin argued that if Native Americans could now by law acquire a hunting and fishing license and carry a gun, then how can they still be classified as non-*sui juris* or incompetent?²⁶³

²⁶⁰ *Denison v. State*, 34 Ariz. 144; 268 P. 617; 1928 Ariz. quoted in Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 14.

²⁶¹ Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 13-14.

²⁶² *Begay v. Sawtelle*, 53 Ariz. 304; 88 P.2d 999; 1939 Ariz. quoted in Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 19-20.

²⁶³ Harless, Mathews, and Mathews, *Opening Brief of Appellants*, 19-20.

In the 1914 Supreme Court trial, *Fernandez v. State*, the court ruled that reservation Indians were “competent witnesses” in a court of law.²⁶⁴ The 1943 trial *Bradley v. Arizona Corporation Commission* granted a reservation American Indian the right to establish a freighting business on his reservation and obtain a permit to do so. The court held that the original law was unconstitutional and violated the Fourteenth Amendment. After reviewing the Appellants’ discussion of these four cases in their opening brief, the Supreme Court agreed that prior court rulings tended to favor American Indian civil rights, apart from the *Porter v. Hall* trial. Justice Udall wrote, “It will thus be seen that this court has liberally construed state laws (except insofar as granting the elective franchise is concerned) favorable to the civil rights of Indians along with all other citizens of the United States.”²⁶⁵

After listing the requirements of a legal guardianship according to Arizona statutes, Justice Udall reasoned that neither of the plaintiffs nor any reservation American Indian could be classified as a ward, because the phrase “under guardianship” in the Arizona State Constitution was never intended to describe a class of people, but only individuals and through a judicial hearing. Justice Udall stated, “This leads us to the conclusion that the framers of the constitution had in

²⁶⁴ Ibid., 20.

²⁶⁵ *Harrison et al. v. Laveen*, 5065, 7.

mind situations where disabilities are established on an individual rather than a tribal basis.”²⁶⁶ Therefore, Udall concluded,

We hold that the term "persons under guardianship" has no application to the plaintiffs or to the Federal status of Indians in Arizona as a class. This conclusion makes it unnecessary to consider the Federal constitutional question heretofore stated. The majority opinion in the case of *Porter v. Hall*, *supra*, is expressly overruled in so far as it conflicts with our present holding.²⁶⁷

Through this ruling, Justice Udall and the other Supreme Court Justices had finally given justice to disenfranchised Native Americans all across the state.

In an interview with the *Arizona Republic*, Representative Harless exclaimed,

The supreme court's decision is a major achievement for Arizona's Indian population and places them in a position which they should have held for many years. I have always contended that if a person can be called upon to fight for his country, then he certainly has the right to take an active part in the government of that country. That was one of the major arguments in this case.²⁶⁸

The *Arizona Republic*'s headline the day following the Supreme Court's ruling proclaimed in bold type, "COURT GRANTS INDIAN VOTE."²⁶⁹ The *Arizona Republic* article estimated that the Court's decision would affect roughly fifty thousand Native Americans in the state.²⁷⁰ In actuality, the total number of

²⁶⁶ Ibid.

²⁶⁷ Ibid., 8.

²⁶⁸ Claiborne Nuckolls, "Ruling Ends 20-Year-Old Adjudgment: Majority Still Barred By Requirements To Register," *Arizona Republic*, July 16, 1948.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

Native Americans over the age of 21 in Arizona in 1940 was approximately 24,817, according to the United States Bureau of Census.²⁷¹ The power of the American Indian vote could potentially exercise significant political influence in the Apache and Navajo counties in Arizona.²⁷² The total populations of Native Americans in Apache and Navajo counties were 20,267 and 14,613 in 1950, respectively—far outnumbering the native populations in other counties.²⁷³ Justice Udall served as either an attorney or judge in the Apache County Courthouse for over twenty-eight years. The high numbers of Native American constituents in his home county certainly had a positive influence over his views on American Indian civil rights issues. Congratulatory letters from friends and associates of Justice Udall began to pour into his office after the trial. University of Arizona professor, N.D. Houghton wrote to Udall, “Needless to say, I am pleased with the decision... Your opinion is most effectively and excellently done.”²⁷⁴

²⁷¹ U.S. Bureau of the Census, *Population: Volume II Characteristics of the Population 1940*, prepared by the Department of Commerce, Bureau of the Census, Washington DC: Government Printing Office, 1943, 354.

²⁷² Laird J. Dunbar, *A Study of the Suffrage of the Arizona and New Mexico Indian* (master’s thesis, Albuquerque: University of New Mexico, 1948), 53-54.

²⁷³ U.S. Bureau of the Census, *Census of Population: Volume II Characteristics of the Population 1950, Part 3 Arizona*, prepared by the Department of Commerce, Bureau of the Census, Washington DC: Government Printing Office, 1952, 3-48.

²⁷⁴ N.D. Houghton to Levi Stewart Udall, letter, July 21, 1948, Levi Stewart Udall Papers, MS-293, University of Arizona Special Collections, Tucson, Arizona.

Dr. Clarence G. Salsbury the Superintendent of Ganado Mission also expressed his admiration for Udall, “You are congratulated on having the courage and the splendid common sense to snap the first big link in the chain of shameful discrimination against our Indian friends in Arizona.” Salsbury continued, “Having overcome this greatest obstacle it should materially speed the day when the sham called wardship is completely eliminated, and our Indians assume the full privileges and responsibilities of a citizenship that now, thanks to your sound judgment, really means something to them.”²⁷⁵ A day later, Salsbury sent another letter requesting several copies of Justice Udall’s opinion for distribution. Salsbury wrote that he intended to frame one of the copies for display in the Ganado high school, “so” he proclaimed, “that our students may never forget the eventful day that made them eligible for the franchise...”²⁷⁶

Udall’s church, the Church of Jesus Christ of Latter-day Saints, also recognized Justice Udall’s opinion. S. Eugene Flake of the Navajo-Zuni Mission in Gallup, New Mexico wrote to Udall, “I only wish all our public servants, had the same good wholesome interest in the Indians. I’m sure tho [sic] that a few can make a decided ripple, that eventually grow into a tidal wave. We can see the influence of the few who know what they are about, gradually swaying the public

²⁷⁵ Clarence G. Salsbury to Levi Stewart Udall, letter, July 19, 1948, Levi Stewart Udall Papers, MS-293, University of Arizona Special Collections, Tucson, Arizona.

²⁷⁶ Clarence G. Salsbury to Levi Stewart Udall, letter, July 20, 1948, Levi Stewart Udall Papers, MS-293, University of Arizona Special Collections, Tucson, Arizona.

opinion and I know that we will eventually win.”²⁷⁷ Most significantly, Justice Udall received a letter of thanks from Felix S. Cohen, the celebrated father of American Indian law. Cohen proudly stated, “I have seldom read an opinion of any court which moved more lucidly or more logically from undeniable premises to inevitable conclusions, and at the same time expressed so well the basic sentiments of humanity, without which logic cannot move the judgement [sic] of mankind.”²⁷⁸ Many friends of the Indians privately celebrated Justice Udall’s opinion as another victory in the battle for American Indian civil rights.

In spite of the celebratory atmosphere, some local newspapers expressed a mix of apprehension and perhaps a sense of satisfaction that illiteracy would disqualify a large percentage of reservation American Indians from voting. The *Arizona Republic* reported that an approximate eighty to ninety percent of the Native American population would probably not meet all the requirements for the electorate, due to high illiteracy rates.²⁷⁹ The *Phoenix Gazette* also reported the same information on July 17, 1948, of the impact illiteracy rates would have on the eligibility of Native Americans for the electorate, particularly on the Navajo reservation they added. The newspaper additionally noted that the only further

²⁷⁷ S. Eugene Flake to Levi Stewart Udall, letter, July 29, 1948, Levi Stewart Udall Papers, MS-293, University of Arizona Special Collections, Tucson, Arizona.

²⁷⁸ Felix S. Cohen to Levi Stewart Udall, letter, July 19, 1948, Levi Stewart Udall Papers, MS-293, University of Arizona Special Collections, Tucson, Arizona.

²⁷⁹ Claiborne Nuckolls, “Ruling Ends 20-Year-Old Adjudgment: Majority Still Barred By Requirements To Register,” *Arizona Republic*, July 16, 1948.

way to block American Indians from voting was by state legislative action, and that an appeal to the United States Supreme Court was unlikely. The article furthermore stated, “The situation has many aspects. For example, an Indian can now vote for a sheriff in a county, but the same sheriff cannot arrest that Indian for a crime committed on a reservation.”²⁸⁰ The *Tucson Daily Citizen* reported that American Indians could now vote on laws, which may or may not affect them through initiative and referendum. They also pointed out that it was currently possible for Native Americans to vote on tax laws, of which they were not susceptible to contribute. The *Tucson Daily Citizen* added however, that American Indians could be subject to the state sales taxes if an executive order from the State Tax Commission found it necessary. The paper also commented that with the increase of the new voting constituents to the electorate, the number of United States representatives could also increase.²⁸¹ For reporting on the outcome of the trial, the press demonstrated a conservative slant, which in turn also represented the political pulse of many of their readers.

Despite a clear air of trepidation in the local newspapers about the Supreme Court adding American Indians to the electorate, there was some celebration. The *Phoenix Gazette* reported on July 17, 1948 that Amos L. Belone, a Navajo veteran from the United States Army’s Okinawa campaign, father of

²⁸⁰ Dan M. Madden, “Indian Vote Fight Up to Legislature,” *The Phoenix Gazette*, July 17, 1948.

²⁸¹ Dick Smith, “State Supreme Court Rules Indians May Vote, If Able To Read,” *Tucson Daily Citizen*, July 16, 1948.

five and employee of the Navajo Ordinance Depot Hospital registered at the Coconino County Recorder's Office as a "'determined Republican.'"²⁸² Belone was reportedly the first Native American to take advantage of the Court's ruling to register to vote in the State of Arizona.²⁸³ Not only does this article report on the first Native American to register to vote, but it also uncovered a long-standing irony in the battle of voting rights. In the 1928 voting rights case, politicians, and government officials were concerned that the Native Americans would vote en masse for Republicans due to their presumed ignorance. The plaintiffs, Peter Porter and Rudolph Johnson, had attempted to register for the Democratic Party in 1928, the same party that Frank Harrison and Harry Austin tried to join in 1948. Amos L. Belone mentioned above was a Republican, proving that Native Americans, like everyone else, are individuals with independent minds. This article disproves the unfounded bias that Arizona officials had in the 1920s about the American Indian vote.

The registration of Amos L. Belone to the electorate was a victory for American Indian rights in Arizona, but Native Americans would find many more trials and tribulations before they could even make it to the ballot box. The largest challenge to overcome were imposed literacy tests—a method of disenfranchising thousands of uneducated people from all different backgrounds all over the state. Quoting the *Los Angeles Times* in 1948, "the fight for full

²⁸² "Indian to Vote Republican," *Phoenix Gazette*, July 17, 1948.

²⁸³ *Ibid.*

Indian rights is far from over; but slowly the Indians are winning.”²⁸⁴ It indeed was a slow process. Literacy tests were not suspended until 1965, when Congress passed the monumental Voting Rights Act. The Voting Rights Act would earn its place as another win for American Indians civil rights.

²⁸⁴ Will Rogers, Jr., “Indians Win More Rights,” Los Angeles Times, September 13, 1948.

CHAPTER 4

JUSTICE ONCE AND FOR ALL?

In 1948, the Arizona Supreme Court's decision that Native Americans were not "under guardianship" according to their interpretation of the Arizona State Constitution, affected other arenas in the state's relationship with its Native American constituency. One arena was state-supported public assistance to Native Americans as promised by the Social Security Act of 1935. The Social Security Act has been both one of the most supported and controversial acts since its passage during the Great Depression. In Arizona in the 1940s, the issue surrounding the Social Security Act was whether the state would fund public assistance for Native Americans.

At the start of World War II, government officials in Arizona debated if and what benefits for American Indians the state would pay from the Federal Social Security act. After an inquiry from Ernest Victor, the Chairman of the San Carlos Tribal Council, Governor Osborn contacted Senator Carl Hayden on January 25, 1941 regarding the application of old age assistance to American Indians. Senator Hayden responded that the Federal Social Security Act applied to American Indians, but that the State of Arizona "alone among the forty-eight states," had "thus far refused to pay old age assistance and other Social Security benefits to Indians because such Indians are not considered by the officials who have been administering the Social Security program in Arizona to be part of the

general population.”²⁸⁵ The day after the ruling in the *Harrison v. Laveen* trial, the *Arizona Republic* reported that the Court’s decision would fuel fire to the ongoing debate to provide public assistance to Native Americans. The *Arizona Republic* acknowledged Arizona has continued to deny financial coverage for American Indians from the act, “Arizona has based its refusal to accept this responsibility squarely upon the premise that reservation Indians are wards of the government and under guardianship. Officials of the state department of social security and welfare expressed apprehension the decision may have a ‘tremendous’ effect upon the outcome of the dispute.”²⁸⁶ The *Arizona Daily Star* reported on the matter, “there are, at this time, about 1255 cases of reservation Indians who are in need of benefits under one or another phase of the welfare laws which have been processed by the state, but which the state contends should be paid by the Indian service. There will be many more cases.”²⁸⁷ The paper added, “The decision of the Supreme Court has removed one of the points on which the state argued that these Indians were charges of the federal government and therefore, as such, should look to the federal government for aid, and not to the state.”²⁸⁸

²⁸⁵ Carl Hayden to Sidney P. Osborn, letter, February 1, 1941, RG 1, Office of the Governor, SG 14, Governor Sidney P. Osborn, Arizona State Archives, Phoenix, AZ.

²⁸⁶ Claiborne Nuckolls, “Ruling Ends 20-Year-Old Adjudgment: Majority Still Barred By Requirements To Register,” *Arizona Republic*, July 16, 1948.

²⁸⁷“Arizona and the Indian,” *The Arizona Daily Star*, July 17, 1948.

²⁸⁸ *Ibid.*

The following month, in August 1948, Royal D. Marks, attorney for the Hualapai Tribe, contacted Acting-Governor Daniel E. Garvey on the matter. According to Marks, Arizona apparently still continued to deny old age assistance to reservation American Indians. The outcome of the recent *Harrison v. Laveen* trial just a month earlier prompted Marks to petition to Governor Garvey on behalf of the Hualapai Tribe. Marks argued that since the Supreme Court decision allowing American Indians to vote, “there is no longer any excuse for denying the Indian relief, who meets the statutory requirements for assistance under the Social Security set up.” Marks further asserted, “The Indians, who are citizens of this State, deserve as much consideration, and I think a great many people will say more consideration, as any other citizens of this State.”²⁸⁹ Governor Garvey quickly reacted to Mark’s concerns and called a special session in the Arizona legislature in September 1948 on the matter.²⁹⁰

That month, Arizona’s refusal to pay for old age assistance and other Social Security benefits became nationally known. The *Los Angeles Times* reported that both Arizona and New Mexico denied their American Indian constituents any assistance, the newspaper reported, “But discriminations and deprivations, however, are by no means ended by these victories. In Arizona and New Mexico the Indians have yet to secure the same Social Security and old age

²⁸⁹ Royal D. Marks to Daniel E. Garvey, letter, August 5, 1948, RG 1, Office of the Governor, SG 14, Governor Daniel E. Garvey, Arizona State Archives, Phoenix, AZ.

²⁹⁰ “Arizona and the Indian,” *The Arizona Daily Star*, July 17, 1948.

benefits that other citizens of those States enjoy.”²⁹¹ Felix Cohen acknowledged the unfair stance of the State of Arizona towards its American Indian population in his *Handbook of Federal Indian Law*. Cohen proclaimed,

Some state administrators are unaware that Indians maintaining tribal relations or living on reservations are citizens, or mistakenly assume they are supported by the Federal Government, and deny them relief. This discrimination in state aid has made more acute the economic distress of many Indians who are poor and live below any reasonable standard of health and decency.²⁹²

Sidestepping allegations of discrimination and violating the Fourteenth Amendment, Arizona, and New Mexico argued that public assistance was a federal responsibility due to its special guardianship over Native Americans. Furthermore, the two states refused to pay their share of public aid to American Indians, because they argued that their state budgets could not afford to assist financially the large numbers of Native Americans in their states.²⁹³

The debate over federal versus state public assistance to American Indians was blown wide open in 1947 when the Arizona State Department of Public Welfare stood its ground and refused to pay its share as designated by the Social Security Act of 1935. The Commissioner for Social Security held special hearings in both states in February 1949 to resolve the issue. The hearings

²⁹¹ Will Rogers, Jr., “Indians Win More Rights,” Los Angeles Times, September 13, 1948.

²⁹² Cohen, *Felix S. Cohen's Handbook of Federal Indian Law*, 162.

²⁹³ Wilbur J. Cohen, “Public Assistance Provisions for Navajo and Hopi Indians: Public Law 474,” (*Social Security Bulletin*, June 1950: 8-10), 8-9.

eventually led to the creation of Public Law 474.²⁹⁴ Finally, in 1950, the federal government conceded the debate over whose responsibility it was to provide public assistance to Native Americans in Arizona and New Mexico. On July 1, Congress enacted Public Law 474, which provided public assistance to the Navajo and Hopi tribes in Arizona. The law stipulated that the federal government would pay eighty percent of Arizona's obligation in addition to the allocated percentage the federal government was already paying.²⁹⁵

In 1953, Arizona again attempted to rid itself of its financial responsibility in aiding needy American Indians. That year, the State filed a lawsuit against Oveta Culp Hobby, the Federal Social Security Administrator.²⁹⁶ In the trial, *Arizona v. Hobby*, the State of Arizona contended that it was not required to provide financial assistance to reservation American Indians, because according to the State, "no assistance shall be payable under such plan to any person of Indian blood while living on a federal Indian reservation."²⁹⁷ This claim was yet another in the long history of using federal American Indian guardianship as an excuse to refuse rights and aid to Native Americans. The Department of Justice and the Association of American Indian Affairs intervened on behalf of the

²⁹⁴ Ibid., 10.

²⁹⁵ Ibid., 8.

²⁹⁶ Felix S. Cohen, *The Legal Conscience: Selected Papers of Felix S. Cohen*, ed. Lucy Kramer Cohen (Hamden, CT: Archon Books, 1970) 331.

²⁹⁷ *Arizona v. Hobby*, 221 F.2d 498; 94 U.S. App. D.C. 170; 1954 U.S. App.

defendant, denying the State's assertion. Ultimately, the case was appealed to the United States District Court for the District of Columbia and dismissed based on the grounds that Arizona's stance was discriminatory and violated the Fourteenth Amendment.²⁹⁸

Despite the ruling of the 1948 *Harrison v. Laveen* trial, which gave voting rights to reservation American Indians, political discrimination against the minority group lingered. The State simply did not believe it was obligated to pay for the financial assistance of a group of minorities that had had federal care for nearly a century. Indeed, Arizona and New Mexico had the second and third largest populations of American Indians after Oklahoma, and their share of funds would be greater than that of other states, but that still did not give them the right to deny aid to a minority group who desperately needed it. This element of social security denial in American Indian civil rights also demonstrates a conservative battle between states rights versus the federal government. The actions of Arizona and New Mexico suggest obstinacy to federal law. Furthermore, as a relatively new state whose territorial period at this point was longer than its statehood, this account over social security suggests that Arizona was stuck in the vestiges of a territorial mentality that the federal government handled the funding of measures such as these. Whatever the reason for Arizona's actions, it was still

²⁹⁸ Cohen, *The Legal Conscience*, 331.

an unwarranted form of racial discrimination against Native Americans carried out by a state government.

Racial discrimination or minority discrimination occurred in the handling of elections in Arizona as well. State and county governments used old and new methods to outright disenfranchise Native Americans or dilute their collective vote. Since Native Americans, through their sheer numbers could potentially wield enough voting power to make effective political change, state, county, and local governments in Arizona used different methods to maintain the current power structure. These tactics ultimately suppressed the native voice in political participation. The discriminatory schemes to disenfranchise minorities in Arizona were a means to continue white racial dominance in the state. This form of racism was also transparent with “Jim Crow” laws in the Deep South, which degraded and humiliated African Americans into second-rate citizens.

The Fifteenth Amendment declared that suffrage could “not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”²⁹⁹ Once African Americans received the right to vote through the passage of the Fifteenth Amendment by Congress on February 26, 1869, voter discrimination in the form of literacy tests, poll taxes, all-white primary elections, and voter “intimidation” largely contributed to a low turnout of

²⁹⁹ U.S. Constitution, amend. 15, sec. 1.

African American voters during elections.³⁰⁰ The Twenty-fourth Amendment abolished poll taxes in 1964, but the other types of voter discrimination lingered in some states, mostly in the Deep South.

The 1965 Voting Rights Act was a product of the Civil Rights era. The act was primarily a reaction by Congress to the continued racism toward African Americans since Reconstruction; however, its passage revealed that other states outside of the Deep South had similar discriminatory measures within their electoral systems that aimed to disenfranchise other minority groups, like American Indians.³⁰¹ In Arizona, some counties targeted Native Americans and Mexican Americans at the polls. The main discriminatory problem in select Arizona counties before and after the 1965 Voting Rights Act was the literacy test.³⁰²

When Congress passed the Voting Rights Act in 1965, one of its important measures was its suspension of literacy tests based on their discriminatory nature to both non-literate and literate American citizens. Specifically, in Arizona the English-language literacy test denied suffrage to Arizona citizens whose primary language was not English alluding to a number of American Indians and Mexican Americans.

³⁰⁰ McCool, *Native Vote*, 21.

³⁰¹ For more detailed information on the 1965 Voting Rights Act, see McCool, *Native Vote*.

³⁰² *Ibid.*, 45-89.

The United States Commission on Civil Rights submitted a comprehensive report, titled, “The Voting Rights Act: Ten Years After,” in 1975 on the effectiveness of the Voting Rights Act since 1965. A larger part of the report was its discussion of the use of literacy tests, and the temporary mechanisms of the Voting Rights Act to block their usage. The report explained that section four of the Voting Rights Act defined a “covered jurisdiction” or a jurisdiction “made subject to the act’s remedies” as a county, parish, or town of a State that “used a test or device and had less than 50 percent turnout in the 1964 or 1968 election.”³⁰³ Arizona had four counties found to be “covered jurisdictions” after the enforcement of the Voting Rights Act in 1965. In 1965 and early 1966, the counties of Apache, Coconino, Navajo and Yuma were discovered to use “tests or devices” to disenfranchise potential voters. Apache, Coconino, and Navajo counties sued for exemption of its “covered jurisdiction” status in the District Court for the District of Columbia arguing that they had “not used a test or device in a discriminatory manner for 5 (since 1970, 10) years.” Those three counties were successful in their suit to exempt themselves, but Yuma County still obtained the “covered jurisdiction” status. The 1970 Voting Rights Act amendments further investigated the use of “tests or devices in a discriminatory manner” in Arizona and found that the Apache, Coconino, and Navajo were “re-covered” and the additional counties of Cochise, Mohave, Pima,

³⁰³ United States Commission on Civil Rights (USCCR), *The Voting Rights Act: Ten Years After* (Washington D.C.: Government Printing Office, January 1975), 5, 13.

Pinal, and Santa Cruz. The 1975 Report of the U.S. Commission on Civil Rights stated,

It is important to note, as the list of covered jurisdictions shows, that the special coverage provisions of the Voting Rights Act reach into every corner of the United States...Discrimination in voting is not limited to the South: the problems encountered by Spanish speaking persons and Native Americans in covered jurisdictions are not dissimilar from those encountered by Southern blacks, and the Voting Rights Act protects their rights as well.

In Arizona, the number of registered Navajo voters in Apache County increased by 19 percent between the 1972 primary election and the 1974 general election due to “suspension of literacy tests and energetic efforts by Navajo leaders.”³⁰⁴ In addition, the registration rates in the total number of precincts on reservations increased by 7.5 percent between those two election years.³⁰⁵ In Coconino County alone, which contains a portion of the Navajo reservation, registration rates on reservation precincts jumped from 10.8 percent in 1970 to 23.5 percent in 1974, with a large increase to the registration rate after literacy tests were suspended. Commissioner Frankie M. Freeman of the 1975 report recommended that Congress should outright eradicate literacy tests instead of pushing forward

³⁰⁴ Ibid., 58.

³⁰⁵ Ibid., 58-59.

more ten-year suspensions.³⁰⁶ In 2006, Congress voted to extend the temporary provisions like the suspension on literacy tests for another twenty-five years.³⁰⁷

After the suspension of literacy tests, Native American representation also increased. Navajos were elected to school boards on the reservation, the first American Indian county supervisor was elected in 1972, and three state representatives of Native American descent were elected in 1974.³⁰⁸ Tom Shirley the Navajo elected to the Apache County Board of Supervisors in 1972 endured a lawsuit by his opponent claiming Shirley was unqualified for the position, because of “his immun[ity] from civil process while on the Navajo Reservation and he does not own any taxable property.”³⁰⁹ The Arizona Supreme Court who heard the case disagreed with the opponent’s claim, and dismissed the case.³¹⁰

Furthermore, the report observed that Arizona’s “strict” voter registration purging statutes hindered voter turnout of Native Americans. According to the report, Arizona law required the cancellation of voter registration, if a voter had not voted in the last two years. The County Recorder’s Office then mailed notices to their delinquent voters of their impending voter registration cancellation, and

³⁰⁶ Ibid., 357.

³⁰⁷ *The Voting Rights Act of 1965 As Amended: Its History and Current Issues*, by Garrine P. Laney, Congressional Research Service Report for Congress, American National Government Domestic Social Policy Division, June 12, 2008, Summary page.

³⁰⁸ USCCR, *The Voting Rights Act: Ten Years After*, 65.

³⁰⁹ Ibid., 166.

³¹⁰ Ibid.

informed them to respond within two months. After 1972, attrition rates were high in Apache and Coconino Counties. Therefore, thirty-six percent and twenty-five percent of the registered voters in those two counties, respectively, had their voter registrations revoked in 1974 by the County Recorder's Office—this accounts for the purging of over six thousand voter registrations of which the report claims were mostly Navajo Indians.³¹¹ The report also noted that a delay in mailing the notice of cancellation, difficulty of obtaining mail due to weather, and English-illiteracy of many Navajos contributed to the high number of purged registrations from this tribal community.³¹²

Another issue relating to minority voting rights in Arizona and elsewhere was the requirement of re-registration. According to the report, Arizona required a complete re-registration of voters in 1970, which removed large numbers of Native Americans and Mexican Americans from the General Register.³¹³ The report concluded, “the process [of re-registration] places a substantial burden on the minority voter, who has often succeeded in registering only after overcoming many obstacles.”³¹⁴

³¹¹ Ibid., 85.

³¹² Ibid., 85-86.

³¹³ Ibid., 93-94.

³¹⁴ Ibid., 93.

Poor policy of informing voters of the change in location of polling places also contributed to lower turnout rates among minorities.³¹⁵ The report stated the damaging effects of this particular problem, “When a polling place change is not publicized, many voters go to the wrong place to vote. Told to go somewhere else, many see it as a runaround and may not vote at all.”³¹⁶ Furthermore, the report added, that any notice of a polling place change in Arizona was in English—useless to those voters who had a primary language other than English.³¹⁷ Those that did know the location of the polling centers in the 1972 election in Apache County found them overcrowded with long lines and a wait of over two and half hours.³¹⁸ The county finally added eleven new polling centers to the reservation by 1974, but as the reports affirmed, “...the county assigned people to precincts arbitrarily and without firsthand knowledge of the location of residence.”³¹⁹ Thus, a new deterrent for some Navajos in Apache County was the long distance to get to the new polling centers the county had just established.

In 1975, when the report was submitted, Arizona had no statute requiring bilingual voting materials for Spanish-speaking voters or Native Americans

³¹⁵ Ibid., 107-108.

³¹⁶ Ibid., 107.

³¹⁷ Ibid., 109.

³¹⁸ Ibid., 109-110.

³¹⁹ Ibid., 110.

whose primary language was something other than English.³²⁰ After the submission of this report, Congress enacted Section 203 of the Language Minority Provision of the Voting Rights Act in 1975. Section 203 stipulates that states provide election materials in languages other than English.³²¹ Since 1975, Arizona has had statewide coverage for Spanish, and twelve counties are required to provide voting materials for American Indian languages.³²² In 1974, Arizona banned straight-party voting after promising the Department of Justice it would provide “adequate assistance” to its minority voters and “sufficient time would be allowed for voting.”³²³ In 1988, the Department of Justice sued the State of Arizona for providing inadequate voting materials and procedures in the Navajo language in the Apache and Navajo Counties, as required by the Language Minority Provisions of the Voting Rights Act. Ultimately, the case was settled out of court when the State of Arizona agreed to start the Navajo Language Election Information Program.³²⁴ The 1992 amendment to the Voting Rights Act, known as the Voting Rights Language Assistance Act ordered states to provide voting materials in languages other than English when a county of ten thousand or

³²⁰ Ibid., 120.

³²¹ United States Commission on Civil Rights (USCCR), *Voting Rights Enforcement & Reauthorization: The Department of Justice’s Record of Enforcing the Temporary Voting Rights Act Provisions* (Washington D.C.: Government Printing Office, May 2006), 49.

³²² Ibid., 49-51.

³²³ USCCR, *The Voting Rights Act: Ten Years After*, 123.

³²⁴ McCool, *Native Vote*, 69.

more had a population of minorities who were “limited English proficient.”³²⁵ Further provisions of the Amendment required voting materials in native languages on reservations if five percent qualified for the assistance even though the five percent may be disproportional to the county’s total population—this was an important measure for reservations that spanned more than one county.³²⁶ In 2006, Congress extended the temporary provisions of the Voting Rights Act, including Section 203, for another twenty-five years.³²⁷

Vote dilution was another complex problem for minorities. The report defined vote dilution as, “arrangements by which the vote of a minority elector is made to count less than the vote of a white.”³²⁸ The redistricting of voting precincts and voting regulations are the primary causes of vote dilution.³²⁹ The 1970 redistricting plan for Arizona had a two-fold problem. The first issue was the fact that the 1970 redistricting plan did not use current census data and presupposed that the number of registered voters in a precinct was proportional to the number of people in that same district.³³⁰ Since minorities were generally under registered compared to whites, powerfully small, predominately-white

³²⁵ Ibid., 33.

³²⁶ Ibid., 34.

³²⁷ *The Voting Rights Act of 1965 As Amended*, Summary page.

³²⁸ USCCR, *The Voting Rights Act: Ten Years After*, 204.

³²⁹ Ibid.

³³⁰ Ibid., 243.

districts were formed even though the law stipulated that each district contain the same percentage of population.³³¹

Second, the State Legislature originally split the Navajo reservation into three districts, diluting the Navajo vote, and giving the Navajo Nation zero chances of electing a Navajo representative.³³² The plan of dividing the Navajo reservation occurred because of an incumbency rule and the desire to make districts “politically homogenous.”³³³ The incumbency rule required there be no fewer number of districts than the number of currently incumbent legislators; ensuring that the federal mandate could not unseat a currently seated elected official. The United States District Court ruled that the 1972 redistricting plan could not break up the Navajo reservation into three districts, but insisted the plan leave it as one.³³⁴ Once, the Navajo reservation became one voting district in 1972, the district immediately elected a Navajo representative to two of the open seats in that election, one State senator and one of the two State representatives. In 1974, all three offices had Navajo elected officials.³³⁵

Another issue over redistricting in Apache County arose in 1973 over the redrawing of County Supervisor districts. The 1973 *Goodluck v. Apache County*

³³¹ Ibid.

³³² USCCR, *The Voting Rights Act: Ten Years After*, 246; McCool, *Native Vote*, 48.

³³³ USCCR, *The Voting Rights Act: Ten Years After*, 246.

³³⁴ *Klahr v. Williams*, 339 F. Supp. 922, 927 (D. Ariz. 1972); USCCR, *The Voting Rights Act: Ten Years After*, 246-247.

³³⁵ USCCR, *The Voting Rights Act: Ten Years After*, 247.

United States District Court case determined that the county had disproportionately divided the county into three districts with uneven population numbers, thus violating the provisions of the Voting Rights Act and the Fifteenth Amendment.³³⁶ District 3 had an overwhelmingly high population of 26,700 people in comparison to District 2 containing 3,900 citizens and 1,700 in District 1, and 23,600 of the 26,700 counted constituents in District 3 were Native Americans.³³⁷ Therefore, the County had diluted the Native American vote in District 3, based on the justification from the County that American Indians were not citizens according the United States Constitution and not permitted to vote, because they did not pay taxes.³³⁸ The District Court did not buy the defendant's claim that Native Americans were not citizens, and ruled against the defendants ordering the county to redistrict according to the equal standards of the Voting Rights Act.³³⁹ The United States Commission on Civil Rights concluded before the ruling in the *Goodluck v. Apache County* trial, "Thus 10 years after the Voting Rights Act enabled most Navajos in Apache County to begin to participate in the

³³⁶ *Goodluck v. Apache County* consolidated with *United States v. Arizona*, 417 F. Supp. 13 (D. Ariz. 1975); aff'd 429 U.S. 876 (1976); USSCR, *The Voting Rights Act: Ten Years After*, 251-253; McCool, *Native Vote*, 48.

³³⁷ *Goodluck v. Apache County*; USSCR, *The Voting Rights Act: Ten Years After*, 252, 254.

³³⁸ *Goodluck v. Apache County*; USSCR, *The Voting Rights Act: Ten Years After*, 254.

³³⁹ *Goodluck v. Apache County*; McCool, *Native Vote*, 48.

political process, their own county government is trying to exclude them from it.”³⁴⁰

The voting rights of Native Americans and other minorities had greatly improved since the days of literacy tests, inadequate voting materials and policies, and vote dilution problems in the ten years after the 1965 Voting Rights Act. Finally, the power of the native vote was beginning to be noticed in Arizona. The report of the Commission of Civil Rights, however, warned, “the very real gains that have been made, however, must not be allowed to obscure the persistence of racial discrimination in the electoral process.”³⁴¹ In 1981, Forty-eight percent of the American Indian voting population was reported to be registered in jurisdictions covered by Section 5 of the Voting Rights Act. Therefore, the 1981 report concluded that minority groups are “considerably underrepresented” in states like Arizona where there are high percentages of minorities.³⁴² Recent programs in the last two decades like the Navajo Language Election Program and the “Get the Vote Out” campaign have had successes. Apache County officials reported an increase of twenty-five percent in Navajo voter turnout between 2000

³⁴⁰ USCCR, *The Voting Rights Act: Ten Years After*, 332. For more information on legal cases regarding Native American voting disputes in Arizona and in other states, see McCool, *Native Vote*, 45-89. For specifically voting disputes in Arizona see, James Thomas Tucker and Rodolfo Espino, *Voting Rights in Arizona: 1982-2006 A Report of RENEWTHEVRA.org*, (Barrett Honors College; Political Science Department, Arizona State University, Tempe: RenewtheVRA.org, 2006).

³⁴¹ USCCR, *The Voting Rights Act: Ten Years After*, 1.

³⁴² United States Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (Washington D.C.: Government Printing Office, September 1981), 19.

and 2004.³⁴³ At the very least, minorities now have the power to take legal action against injustices in the electoral process thanks to measures from the Voting Rights Act of 1965 and its later amendments.

³⁴³ Tucker, *Voting Rights in Arizona: 1982-2006 A Report of RENEWTHEVRA.org*, 48.

CHAPTER 5

CONCLUSION

In 1982, when Frank Harrison was still living, the Intertribal Council of Arizona and the Arizona Commission of Indian Affairs honored him during a special recognition event for Native American voting rights, and presented to him an honorary plaque. The day was filled with celebration as representatives from different tribal communities and Arizona elected officials gathered together in honor of the monumental achievement he represented. Frank Harrison, the Yavapai Indian whose perseverance and determination called upon him to challenge the suppressive status quo was asked by the event's coordinators to give a speech. His address was the last given to an eager crowd at the Salt River Pima Maricopa Indian Community gym that day. Everyone wanted to know what the star of the day had to say about his achievement for generations to come of American Indian citizens in Arizona. Harrison calmly walked up to the podium and spoke into the microphone two words, "Thank you." With incredible modesty, Harrison left the stage.³⁴⁴

On July 15, 2007, sixty years to the day after the Arizona Supreme Court finally granted voting rights to the state's American Indian citizens, Governor Janet Napolitano declared the day, *Arizona Native American Right To Vote Day*. The proclamation recognized all the notable characters of this incredible story,

³⁴⁴ Story attributed to Patricia Mariella, interview by Jenna Bassett, (March 8, 2011).

including Frank Harrison and Harry Austin. The final statement of the proclamation declared, “WHEREAS, although Arizona law now recognizes the right of Native American citizens of Arizona to vote in State elections, it remains vital that we work together to ensure that every eligible voter is able to exercise this most fundamental right.”³⁴⁵ Every year on July 15, the Fort McDowell Yavapai Nation hosts a commemoration event in honor of the day’s importance to American Indian communities across the state, and to celebrate the triumphs of their two beloved tribal members, Frank Harrison and Harry Austin.³⁴⁶

The story of Native American voting rights in Arizona is yet another swing in the oscillating pendulum of American Indian civil rights. In our state alone, native rights have been subjugated to controversial battles reflected in court cases and federal and state legislation. Complex factors contributed to a final success in 1948 during the *Harrison v. Laveen* trial, which determined suffrage for all American Indians in Arizona. Since the end of the nineteenth century American Indian citizenship has been a contested issue in United States governmental policy. Finally, in 1924 Congress authorized the Indian Citizenship Act making all American Indians born or naturalized in the United States, American citizens. The “Indian Question,” however was not resolved and the

³⁴⁵ Governor Napolitano, Proclamation, “Arizona Native American Right To Vote Day, Proclamation M07-696,” Arizona Administrative Register/Secretary of State, Semiannual Index, (June 26, 2007), http://www.azsos.gov/public_services/Register/2007/27-52/_GovExecOrdrsProcs.pdf, (accessed October 27, 2011): 116-117.

³⁴⁶ Susie Steckner, “Rock the Vote,” *Phoenix Magazine*, Cities West Publishing, April 2010, <http://www.phoenixmag.com/lifestyle/history/201004/rock-the-vote/> (accessed October 27, 2011).

peculiar dual citizenship status of American Indians continued to attract negative connotations about the validity of the legal status of Native Americans.

Arguably, the Indian Citizenship Act was yet another action by the federal government to impose the assimilation of Native Americans into mainstream American society, yet the guarantee of voting rights—the one true aspect of a democratic society was intentionally not included into the statute. Thus, the States had the authority to determine the voting status of its Native American constituents. Most states granted this privilege to American Indians with the passage of the Indian Citizenship Act, but two states, Arizona and New Mexico, denied this fundamental right until 1948—an astonishing twenty-four years after the enactment of the Indian Citizenship Act.

After Congress passed the Indian Citizenship Act in 1924, Arizona lawmakers, with the urging of the Bureau of Indian Affairs, initially accepted, generally speaking, the stance that American Indians were entitled to vote in Arizona, but that view eroded as the first general election drew near in which Native Americans could have any political influence. Peter Porter and Rudolph Johnson, two Pima Indians attempted to register to vote in the Casa Grande precinct, because they believed that it was their fundamental right to do so, since they were new citizens of the United States. The County Recorder disagreed, and a legal conflict ensued over whether the 1924 Indian Citizenship Act gave American Indians the authority to vote.

The paternalistic decision of the Arizona Supreme Court in 1928, opined that the legal status of Native Americans on reservations as wards of the federal government deemed them ineligible to vote based on one phrase in the Arizona State Constitution, which disallowed citizens “under guardianship” to vote. Ironically, the same court ruled just months earlier that Native Americans had the competency and independence of person to sit on a jury of their peers. Arizona law was as unclear about the legal status of Native Americans as was mainstream thinking. The 1928 Arizona Supreme Court ruling did however degrade the citizenship status of Native Americans—specifically those residing on reservations, as second-class. Just four years after finally receiving citizenship rights by the federal government, the State of Arizona determined its American Indian constituency as subaltern citizens.

The challenge to Native American voting rights in 1928 was a direct result of white government officials trying to maintain the current political and social power structure. Representatives from the Arizona Democratic party, the dominant party in Arizona the 1920s, feared that Native Americans en masse would vote for the opposing Republican Party. Some Democrats formed a racial stigma of Native Americans as too “ignorant” to make independent choices other than the Republican incumbents. Secondly, the threat of enfranchising such a large minority population of American Indians could have potentially unbalanced the social and political power of white Americans in the state. The ramifications

of enfranchising American Indians were too great, and the State of Arizona used the judicial system to squash any hope for American Indian suffrage that year.

Gradually the legal and social status of Native Americans changed in Arizona over the next two decades. The Depression of the 1930s and the Administration of liberal-thinking John Collier in the Bureau of Indian Affairs set a new course of mainstream attitudinal changes towards Native Americans and American Indian affairs. Specifically, the Indian New Deal and the Indian Reorganization Act established further competency for tribal governments to handle their own affairs.

The catalyst of World War II finally opened the door for American Indian civil rights in Arizona. Native Americans, like all Americans of different racial backgrounds joined in the war effort sacrificing their lives and their resources for a greater national cause. Returned Native American veterans like Ira Hayes received a welcoming wave of respect and admiration from white people all over the country, and American Indians reaped the benefits of yet another mainstream attitudinal change towards their ethnic group. By 1948, the outdated *Porter v. Hall* ruling disenfranchising Native Americans in Arizona did not seem so fair, especially when these patriotic heroes had given their lives for America.

During the 1940s, the Democratic Party, by this time with the presidency of Franklin Delano Roosevelt had experienced another political realignment, making the party progressively more liberal both in social and fiscal policy. After the Democratic Party began using more liberal approaches to governmental

policy, it was only a matter of time before another challenge to American Indian disenfranchisement would restart the discussion on the legitimacy of the twenty-year judicial ruling. American Indian civil rights groups, like the National Congress for American Indians, looked for a Native American veteran willing to stand up to the challenge of battling for voting rights through the Arizona judicial system. The Committee on Civil Rights established through an executive order of the Truman administration, criticized Arizona and New Mexico for their continued disenfranchisement of Native Americans—an influence on the 1948 *Harrison v. Laveen* trial that came straight from the top. The Department of Justice, the Department of the Interior, the National Congress of American Indians and the American Civil Liberties Union all filed briefs of *amicus curiae* in support of Frank Harrison and Harry Austin's suit for voting rights. Felix S. Cohen, American Indian civil rights activist and celebrated father of American Indian law also provided his support to the cause. The unanimous decision of the 1948 Arizona Supreme Court to overturn its previous ruling was extraordinary, and resulted in the enfranchisement of generations of American Indians in Arizona to come.

With so many elements gelling at once, it was inevitable that Native Americans would finally obtain suffrage in Arizona after twenty years of political suppression, but the path to get there was challenging to say the least. The 1948 ruling had its impact in other civil rights issues. Native Americans in New Mexico were also granted voting rights in the months after the *Harrison v. Laveen*

case—the Arizona trial certainly had influenced the New Mexico State Supreme Court in deciding in favor of the plaintiff in the *Trujillo v. Garvey* trial.³⁴⁷ Finally, after fifteen years of the State of Arizona’s refusal to pay public assistance to American Indians living on reservations, the federal government stepped in and made it happen.

Even though American Indians had the right to vote, they did not necessarily have the means to do so. Voter discrimination was an abhorrent problem of the Civil Rights era, and the 1965 Voting Rights Act signed into law under the Johnson administration effectively put an end to the unfair treatment of minorities during the electoral process. Literacy tests, vote dilution tactics, registration purges, inadequate voting materials and policies, and intimidation were all methods used by whites to suppress the minority vote. The Voting Rights Act in tandem with the 1964 Civil Rights Act effectively abolished “Jim Crow” laws in the Deep South. However, the enforcement of the Voting Rights Act revealed that voter discrimination was rampant in other non-South states and with other minority groups. In Arizona, Native Americans and Mexican or Hispanic Americans were intentionally disenfranchised by one or more of the methods stated above. After several amendments to the law and strong enforcement by the Department of Justice, many of the voter discrimination issues have been resolved, but some remain to this day.

³⁴⁷ For more information about the story of Native American voting rights in New Mexico and the *Trujillo v. Garvey* trial, see Carol Ann Venturini, *The Fight for Indian Voting Rights in New Mexico*, (master's thesis, Albuquerque: The University of New Mexico, 1993).

Perhaps these issues of political discrimination towards American Indians in Arizona is the result of non-native government officials acknowledging the significant political power Native Americans can wield if all their votes are counted. It is estimated that the twenty-two tribal communities own twenty-eight percent of the land in Arizona. Conceivably, the growing economic power of Arizona tribes due to gaming could translate into political power. The political power of Native American tribal communities affects the control of numerous environmental resources, like water, within the State of Arizona. The right to vote for all Arizonans ultimately affects the political power of those managing those resources.

Voter discrimination is still a problem today in multiple states across the nation. Currently, voter registration purges, redistricting problems, restrictive voter registration rules, ineffective ballot electronic systems, and limiting voter identification requirements all threaten to dilute or disenfranchise the minority vote.³⁴⁸ It is estimated that some five million Americans in a number of states, mostly minorities, will be affected detrimentally by recently enacted voting restrictions.³⁴⁹ This current issue of minority discrimination affects all

³⁴⁸ Brennan Center for Justice at NYU School of Law, *Voting Rights & Elections*, http://www.brennancenter.org/content/section/category/voting_rights_elections/ (accessed October 27, 2011).

³⁴⁹ Jeanine Plant-Chirlin and Andrew Goldston, "Study: New Voting Restrictions May Affect More than Five Million," *Brennan Center for Justice at NYU School of Law*, October 3, 2011, http://www.brennancenter.org/content/resource/study_new_voting_restrictions_may_affect_more_than_five_million/ (accessed October 27, 2011).

Americans. To paraphrase Felix S. Cohen: Even the disenfranchisement of the smallest minority only makes our democracy weaker. The freedom to participate politically in the government that represents us is a fundamental building block of our country, and without this right, we have no foundation.³⁵⁰ In Frank Harrison's own words, "Well that's one thing we all look for, freedom. We don't think about fighting each other, from now on we know better. Well what I hope for is to help each other and get along."³⁵¹

³⁵⁰ Cohen, *The Legal Conscience*, 257.

³⁵¹ Quote provided from *The History of Indian Voting in Arizona*, DVD.

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